

THE LAW OF THE PRESS

SECOND EDITION

JOSEPH R. FISHER

AND

J. A. STRAHAN

NEW LAW BOOKS

PUBLISHED BY

WM. CLOWES & SONS, LIMITED,

LAW PUBLISHERS AND BOOKSELLERS,

*Printers and Publishers to the Incorporated Council of Law Reporting
for England and Wales,*

27, FLEET STREET, LONDON, E.C.

(Six doors east of Inner Temple Lane.)

Second Edition, thoroughly revised, demy 8vo, 2 vols., cloth, 38s.

BRETT'S COMMENTARIES ON THE PRESENT LAWS

OF ENGLAND. By THOMAS BRETT, of the Middle Temple, Barrister-at-Law, LL.B. London University; B.A. Property and Equity; Clerk and Barrister; "Clerke and Barrister" "Leading Cases"

*** The main idea to deal with past law, to understand the present

The Law Journal recommend these Commentaries as deservedly popular. But praise for the manner that Mr. Brett has put

THE UNIVERSITY OF ILLINOIS LIBRARY

BRETT'S LAW

THOMAS BRETT
Brett's Conveyances
Third Edition, revised
of the Inner Temple
"There is no better
of Courts of Equity
Specially recommended

THE LAW

relates to the Rules
Appendix of Statutes
Circuit, Barrister

THE REAL

of the Land Tenure
By AMHERST D. L.

THE LAW

1889. With Notes
Thoroughly Revised
"Meets a want which
Act."—*Law Times*.

LAW

THE OFFICE OF MAGISTRATE. By HAROLD WRIGHT, B.A.,

LL.B., of the Middle Temple, Barrister-at-Law, Stipendiary Magistrate for the Staffordshire Potteries, Author of "A Treatise on the Bankruptcy Act, 1883," &c.

"This little book contains a capital Epitome of the Duties of a Magistrate, written in popular language. It is full of practical hints and suggestions."—*Law Times*.

Now ready, Second and greatly improved Edition, demy 8vo, cloth, 6s.

THE ENGLISH DEATH DUTIES. A Table showing at a glance

the incidence of the English Death Duties (the Probate, Legacy, Succession, Account, the Temporary Estate Duties, and the Estate Duties under the Finance Acts 1894 and 1896), with reference to the sections of Statutes imposing them, the Forms used in their payment, and at what date of death each or any become payable. With various useful notes and references to decisions. Designed as a means of easy and quick reference to these complicated duties. By E. HARRIS, of the Legacy and Succession Duty Department, Somerset House.

27, FLEET STREET, LONDON, E.C.

Now ready, Second Edition, demy 8vo, cloth, 10s. 6d.

FRIENDLY SOCIETIES (THE LAW RELATING TO).

Comprising the Friendly Societies Act 1896, and the Collecting Societies and Industrial Assurance Companies Act 1896, together with an Appendix containing Model Rules and the Forms appended to the Treasury Regulations, 1897. By F. BADEN FULLER, B.A. (Oxon), of the Inner Temple, Barrister-at-Law.

Just published, demy 8vo, cloth, 21s.

THE LAW AFFECTING SOLICITORS. A Treatise on the

Law Affecting Solicitors of the Supreme Court. By ARTHUR P. POLEY, B.A. (late Scholar of St. John's College, Oxford), of the Inner Temple and Midland Circuit, Barrister-at-Law. With Appendix containing the Statutes bearing on the subject.

Just published, demy 8vo, cloth, 12s. 6d.

THE STOCK EXCHANGE (THE LAW AND PRACTICE OF).

With Appendices containing the Rules and Regulations annotated, and Forms of Instruments accompanying a Mortgage of Securities. By B. E. SPENCER BRODHURST, M.A., B.C.L., of the Inner Temple, Barrister-at-Law.

Just published, Cheap Edition, Illustrated, cloth gilt, 10s.

THE ORDER OF THE COIF. By Mr. Serjeant PULLING.

"Under the above quaint, but appropriate, title, Serjeant Pulling has compiled a most interesting memoir of that grade in the legal profession of which he will probably prove to be one of the last survivors. . . . The introductory chapter and that which follows it are a study in English Constitutional history. . . . The illustrations, eight in all, are admirable."—*Antiquarian Magazine*.

Just published, Second Edition, demy 8vo, cloth, 12s. 6d.

FRASER'S LAW OF LIBEL AND SLANDER. The Principles

and Practice of the Law of Libel and Slander. With Suggestions on the Conduct of a Civil Action, Forms and Precedents, and all Statutes bearing on the subject. By HUGH FRASER, LL.D., of the Inner Temple and Northern Circuit, Barrister-at-Law.

"The book should be welcomed by the busy practitioner."—*Law Times*.

"A good piece of work."—*Law Journal*.

"A practitioner's book, and to practitioners . . . we can heartily commend it."—*Law Notes*.

Just published, royal 8vo, cloth, 25s.

MORTGAGES. A Concise Treatise on Mortgages, Pledges, and Liens.

By WALTER ASHBURNER, M.A., of Lincoln's Inn, Barrister-at-Law; late Fellow of Merton College, Oxford.

"A short treatise on the law of Mortgages . . . has long been wanted, . . . and Mr. Ashburner's book will . . . be a welcome addition to the lawyer's library. . . . A highly creditable performance."—*Law Times*.

Now ready, Second Edition, revised, demy 8vo, cloth, 20s.

THE LAW OF NUISANCES. With Statutory Appendix. By

E. W. GARRETT, M.A., of the Inner Temple and Midland Circuit, Barrister-at-Law.

Demy 8vo, cloth, price 32s. 6d.; cash, 26s.; postage, 9d.

THOMSON'S PRINCIPLES OF EQUITY, AND EQUITY

PRACTICE OF THE COUNTY COURT: for the use of Practitioners in the Chancery Division of the High Court, and in the County Court. With Precedents of Particulars of Claim, Defences, Notices of Motion, Affidavits, Judgments, Orders, &c. By ANDREW THOMSON, Esq., B.A., LL.D., Barrister-at-Law; formerly Lecturer and Reader on Equity to the Incorporated Law Society; and afterwards professor of Equity to the Inns of Court.

Demy 8vo, cloth, 12s. 6d.

ADMIRALTY JURISDICTION and PRACTICE IN COUNTY

COURTS (A TREATISE ON THE). By FRANCIS WILLIAM RAIKES, LL.D. Cantab., of the Inner Temple, one of Her Majesty's Counsel, and BURLEIGH DUNBAR KILBURN, M.A. Oxon., of the Inner Temple, Barrister-at-Law.

Second Edition, royal 8vo, 1,100 pages, cloth, 25s.

THE PRINCIPLES OF RATING as applied to Railways, Docks,

Tramways, Gas and Water Works, Coal and other Mines, Electric Lighting Works, Manufactories, and other Hereditaments. With a complete Digest of Cases and all the important Statutes dealing with Local Rating. By EDWARD BOYLE, of the Inner Temple, Barrister-at-Law, and G. HUMPHREYS-DAVIES, Fellow of the Surveyors' Institute, &c.

Second Edition, thoroughly revised and enlarged, demy 8vo, cloth, 12s. 6d.

CONTEMPT OF COURT, Committal and Attachment and Arrest

upon Civil Process, in the Supreme Court of Judicature. With the Practice and Forms. By JAMES FRANCIS OSWALD, Q.C., M.P.

"There is no higher authority on the subject of contempt of court. . . . than Mr. Oswald."—*Law Times*.

"The reader ceases to wonder at the success which has so often attended Mr. Oswald's efforts to save people from durance vile when he notes the care with which he has inquired into the history of the law of contempt."—*Law Journal*.

NEW LAW BOOKS

WM. CLAYTON & CO.,

LIMITED,

Printers and

Law Reporting

27, FLEET STREET,

LONDON, E.C.

BRETT'S COMMENTARIES ON THE CONVEYANCING ACTS OF ENGLAND
OF ENGLAND
University; B.A.
Property and Equ
"Clerke and Br
"Leading Cases

* * The main idea
to deal with past law,
to understand the pre

The Law Journal

recommend these Commentaries to students, with whom they will become deservedly popular. . . . Mr. Brett's Commentaries are thoroughly comprehensive, and we have little but praise for the manner in which he has discharged his self-imposed task. . . . We are of opinion that Mr. Brett has produced a work of very considerable merit."

Third Edition, thoroughly revised, demy 8vo., cloth, 16s.

BRETT'S LEADING CASES IN MODERN EQUITY. By THOMAS BRETT, of the Middle Temple, Barrister-at-Law, LL.B., Joint-Author of "Clerke and Brett's Conveyancing Acts," and late Lecturer on Equity to the Incorporated Law Society, &c., &c. Third Edition, revised to date. By J. D. ROGERS, B.C.L., of the Inner Temple, and J. M. DIXON, of the Inner Temple, Barristers-at-Law.

"There is no better book or one so good from which the student can learn the most important decisions of Courts of Equity during recent years."—*Jurist*.

Specially recommended as a text-book for "The Final" by the *Solicitors' Journal*.

Now ready, demy 8vo., cloth, 15s.

THE LAW OF LICENSING IN ENGLAND so far as it relates to the Retail Sale of Intoxicating Liquors, and to Theatres and Music Halls. With a full Appendix of Statutes. By JOHN BRUCE WILLIAMSON, of the Middle Temple and North Eastern Circuit, Barrister-at-Law.

Just published, demy 8vo., cloth, 6s.; cash price, 5s.; postage, 5d.

THE REAL REPRESENTATIVE LAW, 1897: being Part I. of the Land Transfer Act, 1897, with Notes thereon, and a Discussion on Administration thereunder. By AMHERST D. TYSSEN, D.C.L., of the Inner Temple, Barrister-at-Law.

Now Ready. Second Edition, Revised. Post 8vo., cloth, 8s. 6d.

THE LAW OF ARBITRATION; being the Arbitration Act, 1889. With Notes of Statutes, Rules of Court, Forms and Cases, and an Index. Second Edition, Thoroughly Revised to date. By W. OUTRAM CREWE, Solicitor, &c., with Honours H.T. 1866.

"Meets a want which has been especially felt by those engaged in arbitration since the passing of the Act."—*Law Times*.

Just published, Third Edition, crown 8vo., cloth, price 5s.

THE OFFICE OF MAGISTRATE. By HAROLD WRIGHT, B.A., LL.B., of the Middle Temple, Barrister-at-Law, Stipendiary Magistrate for the Staffordshire Potteries, Author of "A Treatise on the Bankruptcy Act, 1883," &c.

"This little book contains a capital Epitome of the Duties of a Magistrate, written in popular language. It is full of practical hints and suggestions."—*Law Times*.

Now ready, Second and greatly improved Edition, demy 8vo., cloth, 6s.

THE ENGLISH DEATH DUTIES. A Table showing at a glance the incidence of the English Death Duties (the Probate, Legacy, Succession, Account, the Temporary Estate Duties, and the Estate Duties under the Finance Acts 1894 and 1896), with reference to the sections of Statutes imposing them, the Forms used in their payment, and at what date of death each or any become payable. With various useful notes and references to decisions. Designed as a means of easy and quick reference to these complicated duties. By E. HARRIS, of the Legacy and Succession Duty Department, Somerset House.

27, FLEET STREET, LONDON, E.C.

Text
Fisher

WM. CLOWES AND SONS, Limited, LAW PUBLISHERS,

Now ready, Second Edition, demy 8vo, cloth, 10s. 6d.

FRIENDLY SOCIETIES (THE LAW RELATING TO).

Comprising the Friendly Societies Act 1896, and the Collecting Societies and Industrial Assurance Companies Act 1896, together with an Appendix containing Model Rules and the Forms appended to the Treasury Regulations, 1897. By F. BADEN FULLER, B.A. (Oxon), of the Inner Temple, Barrister-at-Law.

Just published, demy 8vo, cloth, 25s.

THE LAW AFFECTING SOLICITORS. A Treatise on the

Law Affecting Solicitors of the Supreme Court. By ARTHUR P. POLEY, B.A. (late Scholar of St. John's College, Oxford), of the Inner Temple and Midland Circuit, Barrister-at-Law. With Appendix containing the Statutes bearing on the subject.

Just published, demy 8vo, cloth, 12s. 6d.

THE STOCK EXCHANGE (THE LAW AND PRACTICE OF).

With Appendices containing the Rules and Regulations annotated, and Forms of Instruments accompanying a Mortgage of Securities. By B. E. SPENCER BRODHURST, M.A., B.C.L., of the Inner Temple, Barrister-at-Law.

Just published, Cheap Edition, Illustrated, cloth gilt, 10s.

THE ORDER OF THE COIF. By Mr. Serjeant PULLING.

"Under the above quaint, but appropriate, title, Serjeant Pulling has compiled a most interesting memoir of that grade in the legal profession of which he will probably prove to be one of the last survivors. . . . The introductory chapter and that which follows it are a study in English Constitutional history. . . . The illustrations, eight in all, are admirable."—*Antiquarian Magazine*.

Just published, Second Edition, demy 8vo, cloth, 12s. 6d.

FRASER'S LAW OF LIBEL AND SLANDER. The Principles

and Practice of the Law of Libel and Slander. With Suggestions on the Conduct of a Civil Action, Forms and Precedents, and all Statutes bearing on the subject. By HUGH FRASER, LL.D., of the Inner Temple and Northern Circuit, Barrister-at-Law.

"The book should be welcomed by the busy practitioner."—*Law Times*.

"A good piece of work."—*Law Journal*.

"A practitioner's book, and to practitioners . . . we can heartily commend it."—*Law Notes*.

Just published, royal 8vo, cloth, 25s.

MORTGAGES. A Concise Treatise on Mortgages, Pledges, and Liens.

By WALTER ASHBURNER, M.A., of Lincoln's Inn, Barrister-at-Law; late Fellow of Merton College, Oxford.

"A short treatise on the law of Mortgages . . . has long been wanted, . . . and Mr. Ashburner's book will . . . be a welcome addition to the lawyer's library. . . . A highly creditable performance."—*Law Times*.

Now ready, Second Edition, revised, demy 8vo, cloth, 20s.

THE LAW OF NUISANCES. With Statutory Appendix. By

E. W. GARRETT, M.A., of the Inner Temple and Midland Circuit, Barrister-at-Law.

Demy 8vo, cloth, price 32s. 6d.; cash, 26s.; postage, 9d.

THOMSON'S PRINCIPLES OF EQUITY, AND EQUITY

PRACTICE OF THE COUNTY COURT: for the use of Practitioners in the Chancery Division of the High Court, and in the County Court. With Precedents of Particulars of Claim, Defences, Notices of Motion, Affidavits, Judgments, Orders, &c. By ANDREW THOMSON, Esq., B.A., LL.D., Barrister-at-Law; formerly Lecturer and Reader on Equity to the Incorporated Law Society; and afterwards professor of Equity to the Inns of Court.

Demy 8vo, cloth, 12s. 6d.

ADMIRALTY JURISDICTION AND PRACTICE IN COUNTY

COURTS (A TREATISE ON THE). By FRANCIS WILLIAM RAIKES, LL.D. Cantab., of the Inner Temple, one of Her Majesty's Counsel, and BURLEIGH DUNBAR KILBURN, M.A. Oxon., of the Inner Temple, Barrister-at-Law.

Second Edition, royal 8vo, i, 100 pages, cloth, 25s.

THE PRINCIPLES OF RATING as applied to Railways, Docks,

Tramways, Gas and Water Works, Coal and other Mines, Electric Lighting Works, Manufactories, and other Hereditaments. With a complete Digest of Cases and all the important Statutes dealing with Local Rating. By EDWARD BOYLE, of the Inner Temple, Barrister-at-Law, and G. HUMPHREYS-DAVIES, Fellow of the Surveyors' Institute, &c.

Second Edition, thoroughly revised and enlarged, demy 8vo, cloth, 12s. 6d.

CONTEMPT OF COURT, Committal and Attachment and Arrest

upon Civil Process, in the Supreme Court of Judicature. With the Practice and Forms. By JAMES FRANCIS OSWALD, Q.C., M.P.

"There is no higher authority on the subject of contempt of court . . . than Mr. Oswald."—*Law Times*.

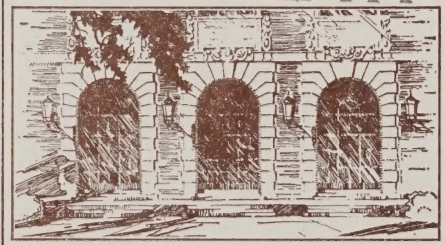
"The reader ceases to wonder at the success which has so often attended Mr. Oswald's efforts to save people from durance vile when he notes the care with which he has inquired into the history of the law of contempt."—*Law Journal*.

Sweet L. Maxwell
Dor
57-

LIBRARY OF THE
UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

KD
2870
.F58X
1898

LAW



LIBRARY
UNIVERSITY OF
Oxford

THE
LAW OF THE PRESS:

A DIGEST OF THE
LAW AFFECTING NEWSPAPERS IN ENGLAND,
INDIA, AND THE COLONIES.

WITH A CHAPTER ON FOREIGN PRESS CODES.

BY

JOSEPH R. FISHER, B.A.,

OF THE MIDDLE TEMPLE AND THE NORTHERN CIRCUIT, BARRISTER-AT-LAW,

AND

J. ANDREW STRAHAN, M.A., LL.B.,

OF THE MIDDLE TEMPLE AND THE MIDLAND CIRCUIT, BARRISTER-AT-LAW; AUTHOR OF
"A GENERAL VIEW OF THE LAW OF PROPERTY," AND JOINT AUTHOR OF MACASSEY
AND STRAHAN ON "THE LAW RELATING TO CIVIL ENGINEERS."

SECOND EDITION.

LONDON:
WILLIAM CLOWES AND SONS, LIMITED,
27, FLEET STREET.

1898.

LONDON :
PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,
STAMFORD STREET AND CHARING CROSS.

26 N 18 - F.L.

KD

2870

. F58x

1898

Law

PREFACE TO THE FIRST EDITION.

CONSIDERING what an important factor in the social and political life of the nation Newspapers have become, it is somewhat remarkable that hitherto no book has been published devoted solely to the law affecting them. It is true that Newspaper law has been dealt with partially in works on the law of Libel and of Copyright, and incidentally in works treating of the law of Literature and of Printers, but so far as the authors are aware there is no book in which the whole law and nothing but the law relating to the Periodical Press is discussed.

And yet the tendency of recent legislation has unmistakably been to give the Newspaper a legal status peculiar to itself. It is the custom of writers on Constitutional Law to assert that in England, as distinguished from Continental States, there is no such thing as a Law of the Press, that written words stand in all cases on an equal footing before the law. Mr. Dicey, in his Vinerian Lectures at Oxford,* repeats and strongly emphasizes this view. It will be clear, we think, from the following pages that, whatever may have been the case in former times, this is true no longer. There is slowly growing up a distinct Law of the Press. Not to mention the provisions as to Registration and Imprint, a

* 'The Law of the Constitution,' Third Edition, 225-253.

Law 14 N 18 Carrawell 338 = 2022

special law of Newspaper Libel has come into existence. The distinction between a libel contained in a book or letter and one published in a Newspaper, which was first recognised in Lord Campbell's Act, has since then steadily deepened, until now the nature both of the wrong and of the remedy depends very largely on whether or not the libel appeared in a Newspaper.

These considerations have led the authors to believe that a work containing a concise but sufficient statement of the Law of the Press is wanted. Though this volume deals with many important branches of the law, still it has been found possible by rigidly excluding everything not affecting Newspapers to keep it within reasonable compass, and at the same time, it is hoped, to add to its clearness and utility. Already many able works exist on the general law of Copyright and of Libel; any claim to consideration which the present work has, is as a digest of the Law of the Press alone.

THE TEMPLE,
1891.

PREFACE TO THE SECOND EDITION.

THE wide acceptance which this work has met with, both from the legal profession and from the Press, has encouraged the authors, in preparing the second edition, to extend its scope in more than one direction. The more important portions of the book have been practically re-written, and much fresh matter has been added, especially in Part I., Chapters II. and III., dealing with such important subjects as Advertisements, Contracts, and Liabilities in general, including not only the legal position and duties of the Editor and his staff, and their relations with the Proprietor, but also the responsibilities of the Proprietor in his relations to others. The question of Newspaper Copyright, an increasingly interesting one in view of numerous important decisions since the first edition appeared, has also been fully dealt with.

In Part II., dealing with Libel, Chapters I., II., and III. have been completely recast, while every decision affecting Newspaper libels reported since 1891 has been noted.

The position of the English Press in our Colonies, in India, and in some of the great Eastern seaports where there are important British settlements, has not hitherto received the attention it deserves. Some of these newspapers are hardly second to the great home journals in position and influence, and they are all, we believe, even

in the smaller and more isolated settlements, conducted on the same honourable lines that have earned for the English Press its reputation for honesty and public spirit. They are all subject to British Law in the sense that the ultimate Court of Appeal has its seat in London, but up to the present their existence and their legal position have been ignored in English Law-books. The extensive demand for such a book as the Law of the Press which was found to exist in the Colonies, both among lawyers and journalists, decided the authors to make an attempt to repair the omission, and in Part III. of this edition there will be found a summary of the laws—Registration, Libel, Copyright, and so forth—affecting English Newspapers in all parts of the world. These laws are, as might be expected, heterogeneous in character, some dating back to the days of Governors' Decrees and Regulations, some having undergone no development since Lord Campbell's Act, while some are of quite modern enactment, and contain reforms and concessions for which our home Newspapers have long been striving in vain. In some cases it has been difficult to ascertain the law, but on the whole the authors may claim for this section that, if not absolutely exhaustive, it will afford an adequate guide to Colonial practitioners and journalists in any difficulties they are likely to meet.

The compilation of such a summary would not have been possible without the cordial co-operation of those interested. The Institute of Journalists, which includes in its membership Press writers all over the Empire, rendered invaluable assistance by authorizing its secretary, Mr. Herbert Cornish, to enter into communication with representative journalists in the various Colonies. It is impossible for the authors to return individual

thanks to the scores of gentlemen who responded so promptly to the appeal addressed to them, but they take this opportunity of thanking them collectively for the pains they took in the matter. The authors' acknowledgments are also and especially due to Mr. W. Haldane Porter, of the Middle Temple, Barrister-at-Law, for his researches in many volumes of Colonial Statutes and Reports, and for his work in compiling and collating the whole of the matter in the Colonial Section.

In the Introduction to the first edition the authors discussed at considerable length some of the grievances of which Newspaper proprietors and writers complain, and suggested remedies. It cannot be said that much has been done in the interval to convince Parliament of the necessity of any extensive change. A Copyright Committee is at present sitting, as so many have sat before, but it is not yet certain whether anything will result in the direction of a simplification of our chaotic and intricate Copyright Laws. The solicitor who speculates in damages, and the impecunious litigant in person, can still harass newspapers with their futile actions, unchecked by an order as to security for costs. The veiled censor at St. Martin's-le-Grand still issues his edicts to Newspaper Managers instructing them how their newspapers are to be made up, where they are to place their title and where their advertisements, whether a story or a sermon is or is not "news," and whether their sheets may be pasted, gummed, or stitched. But if Parliament has done nothing to protect Newspaper proprietors, it is right to add that the strong action of the Lord Chief Justice in more than one recent instance has at any rate done something to discourage the speculator in damages and the litigant in person.

It will be noticed by those who refer to the Colonial section, that in two matters which are most frequently the subject of complaint by Newspaper Proprietors in this country, some of the Colonial Legislatures have already altered the law in the manner desired. In several of the Canadian Provinces and in West Australia the Court has power to order the giving of security for costs in certain cases, and in the majority of the Australian and South African States special protection by means of a temporary Copyright is afforded to telegrams appearing in newspapers.

THE TEMPLE,
July, 1898.

CONTENTS.

PREFACE TO THE FIRST EDITION	PAGE iii
PREFACE TO THE SECOND EDITION	v
TABLE OF CASES	xv

PART I.

REGISTRATION—ADVERTISEMENTS—CONTRACTS— LIABILITIES—COPYRIGHT.

CHAPTER I.

REGISTRATION AND POSTAL REGULATIONS.

The Act of 1881—What is a Newspaper?—Magazines, &c.—Time and place of registration—Change of ownership—Who should register—Misleading registration—Penalties—The common informer—Neglect to register—Representative proprietors—Board of Trade regulations—Copies must be preserved—Imprint—Does not apply to Ireland—A newspaper a “book”—Copies for the libraries—Post Office Act, 1870—The Postmaster-General as censor—Postal definition of a newspaper—Of a supplement—General inland postal regulations—Foreign postage—The Act of 1837—Unauthorised marks a misdemeanour—The Telegraph Act, 1868 1—15

CHAPTER II.

ADVERTISEMENTS—“PRIZE COMPETITIONS”—LOTTERIES, ETC.

May be libellous—Law of Libel Amendment Act, 1888—“Legal” advertisements—Defamatory meaning in advertisements—Contempt of Court in advertisements—Lottery advertisements—

What constitutes a lottery advertisement—Betting advertisements—The Act of 1874—Interpretation—Prize competitions—Recovering stolen property—"No questions asked"—Accident insurance coupons—Liability to Stamp Duty—The Act of 1891—Finance Act, 1895—Indecent advertisements—Right to reject advertisements—Responsibility for illegal matter—Indemnity invalid—Breach of contract—Copyright in advertisements—Artistic advertisements—Advertisement orders to be stamped—Corrupt practices at elections 16—40

CHAPTER III.

PROPERTY—CONTRACTS—LIABILITIES.

Property in title, how acquired—No copyright in title—Infringement of title—Intent to deceive—The *Evening Post*—Nature of property in title—Mortgages of newspapers—Joint ownership—Complications—*Herald* and *Chronicle*—*Times* and *Mail*—Contracts of proprietor with staff—Position of Editor—Scope of his authority—His duties—Editor and contributors—Rights of contributor—Anonymous contributions—Right of Editor to alter—Signed contributions—Limited use of contributions—Termination of contract of employment—Reasonable notice—Wrongful dismissal—What is reasonable notice—Death or bankruptcy of employer—Advertisement canvassers' books—Liabilities of proprietors—Illegal practices at elections—Relief—Newspaper proprietors on public bodies—School Boards—Municipal Corporations—County Councils—District and Parish Councils, Boards of Guardians, and London Vestries—Official Secrets Act—Reporters at public meetings 41—79

CHAPTER IV.

COPYRIGHT.

Increasing importance to newspapers—Right to restrain unpublished matter—Lectures and sermons—Right to restrain unpublished news—*Exchange Telegraph Co.*—Statutory copyright in published matter—Perpetual copyright—Three requisites for copyright—Literary work—Originality—Copyright in reports—Matter must be not illegal—Publication under Act of 1842—A newspaper a "book"—Must be registered—Position of proprietor—Three things necessary—Agreement with writer—Payment of writer—Registration of newspaper—Nature of proprietor's copyright—Separate publication—Position of writer—Definition of piracy—Piracy by literal reproduction—By substantial reproduction—Acknowledgment no defence—The "custom" to quote—International copyright in news—Copyright in illustrations—In photographs—Remedies for breach—Author's remedy—Limitation of actions 80—123

PART II.

THE LAW OF LIBEL.

CHAPTER I.

LIBEL AS A CIVIL INJURY.

Matter must be defamatory to plaintiff—Certainty of application—
 What defamation is—Trade libels—Libels on corporations—
 Malice—Actual malice not necessary where there is no privilege
 —Meaning of writer—Construction—Words *prima facie* innocent
 —Innuendo—Function of judge and jury—Publication by defend-
 ant—*Emmens v. Pottle*—Responsibility for publication—Pro-
 prietor—Printer—Publisher—Editor—Vendor—Author of libel—
 Libel by “interview”—What constitutes publication—Limited
 publication—Libel in foreign newspaper—Previous publication—
 Effect of death of plaintiff or defendant 124—156

CHAPTER II.

PRIVILEGE AND JUSTIFICATION.

Absolute privilege—Partial privilege—Express malice—Proof of malice
 —Privileged publication—Parliamentary Reports—Judicial pro-
 ceedings—“Publicly heard”—*Ex parte* applications—“Contem-
 poraneously”—The Act of 1888—Official notices—Public bodies,
 etc.—Public meetings—Conditions of privilege—“Reasonable con-
 tradiction”—“Public concern” and “Public benefit”—“Fair and
 accurate”—Judge’s charge—*Macdougall v. Knight*—Libellous
 headings—“Justification”—Truth a complete answer if it be
 matter-of-fact—Proof that it is fair comment on a matter of public
 interest, if it be matter of opinion—Public interest—Fair com-
 ment—Mixed comment and allegations of fact—Imputation of
 improper motives—*Campbell v. Spottiswoode*—Private character
 —Allegations of fact—Separable libels—Proof required on plea of
 justification—Innuendo 157—197

CHAPTER III.

SLANDER OF PROPERTY.

What is slander of property—Malice—Actual damage—Injunction—
 Proof of damage 198—204

CHAPTER IV.

CIVIL PROCEDURE.

Jurisdiction—The County Court—"No visible means"—Consolidation of actions—Law of Libel Amendment Act—Particulars—Interrogatories—Name of writer—Steps taken to verify—Circulation of paper—*Whitaker v. Scarborough Post*—Name of Author or Editor need not be disclosed—The defence—Release by plaintiff—"Accord and satisfaction"—"Confession and amends"—Apology—Payment into Court—Lord Campbell's Act—*Res judicata*—Limitation—Death of party—Damages—Aggravation—Mitigation—Previous action—New trial—Costs—Injunctions 205—231

CHAPTER V.

LIBEL AS A CRIMINAL OFFENCE.

Essential distinction from civil libel—A breach of the peace—Classes of criminal libels—Who is responsible?—Lord Campbell's Act—"Presumptively responsible"—Fox's Libel Act—A general verdict—No joint responsibility—Defamatory libels—Publication—Certainty of application—Libel on the dead—Privilege—Justification—"The greater the truth, the greater the libel"—"Truth and public benefit"—At the magisterial inquiry—Disorderly libels—No privilege—No justification—Truth no defence—Blasphemy—Obscene libel—Seditious libel—Treason—Treason felony—Contempt of Parliament—Contempt of Court—Threatening to publish 232—246

CHAPTER VI.

CRIMINAL PROCEDURE.

Criminal information—The Attorney-General *ex-officio*—The Queen's Bench Division—*The Duke of Vallombrosa v. Labouchere*—Indictment—Consent of Judge at Chambers—Inquiry before magistrate—Summary dismissal—Summary conviction—Pleading to the indictment—Justification—Person charged may give evidence—Husband or wife—Punishment—Affidavits in mitigation—Obscene libels 247—256

CHAPTER VII.

CONTEMPTS.

Contempts of Parliament—Of Court—Superior Courts of Record—Newspaper contempts—Must be calculated to prejudice—Appeal—Punishment 257—267

PART III.

COLONIAL PRESS LAW.

Its diversity—Three groups of colonies—Canada—Jamaica—British Guiana—New South Wales—Victoria—Queensland—South Australia—West Australia—Tasmania—New Zealand—India—Hong-Kong—East Asia—Ceylon—Cape Colony—Natal—Transvaal—Privy Council Appeals 268—298

PART IV.

FOREIGN PRESS LAWS.

Early printers—Pope Alexander's Bull—The censorship—The beginnings of liberty—Denmark and Struensee—The American States—The censorship in France—The "Rights of Man"—Spain—Belgium—Greece—The Revolution of 1848—Germany—Austria—The New Codes in France and Germany 299—303

FRANCE.

The Constitution of 1791—The law of 1819—The *Mur Guilloutet*—The *Procès de Tendence*—The *Loi Tinguay*—Compulsory Signature—The *écrivain de paille*—The law of 1881—Position of *Gérant*—Compulsory rectification—Prohibition of foreign papers—Incitement to crime—Defamation—Insult—*L'intention de nuire*—Officials—Libel on the dead—When truth is no defence—Reports forbidden—*Le huis-clos*—Reports of public proceedings—"Successive and exclusive" responsibility—Procedure 303—313

GERMANY.

The law of 1874—Definitions—*Verantwortlicher Redacteur*—*Berichtigungszwang*—Foreign papers—War danger—Order of responsibility—*Dolus*—Negligence—Provisional seizure—The *objektive Verfahren* in Austria—Freedom in Hungary—Suspensory power—Alsace Lorraine 313—320

APPENDIX.

Table of Statutes	321
Statutes	322
INDEX	405

TABLE OF CASES.

A.		PAGE		PAGE
Abernethy <i>v.</i> Hutchinson	85		Belt <i>v.</i> Lawes	209, 223
Abrath <i>v.</i> North Eastern Railway Co.	134		Bembridge <i>v.</i> Latimer	136, 193
Adams <i>v.</i> Kelly	150, 151		Betts <i>v.</i> Gibbins	33
Adamson <i>v.</i> Jarvis	33		Birchall <i>v.</i> Bullock	39
Ajello <i>v.</i> Worsley	201		Bishop <i>v.</i> Latimer	180
American Exchange in Europe, <i>In re</i> , American Exchange in Europe <i>v.</i> Gillig	146, 261		Bishop <i>v.</i> Letts	52
Anderson <i>v.</i> Liebig's Extract of Meat Co.	200		Blake <i>v.</i> Stevens	147, 194
Andrew <i>v.</i> Raeburn	260		Bond <i>v.</i> Douglas	149
Annaly (Lord) <i>v.</i> The Trade Auxiliary Co.	179		Bonnard <i>v.</i> Perryman	231
Application for attachment for contempt, <i>in re</i>	266		Booth and others <i>v.</i> Briscoe	220
Archbold <i>v.</i> Sweet	61		Borough of Sunderland Case	74
Australian Newspaper Co. <i>v.</i> Bennett	128, 130, 198		Borthwick <i>v.</i> <i>Evening Post</i>	43
Avery <i>v.</i> Wood	121		Bourke <i>v.</i> Warren	125
B.			Bowden <i>v.</i> Russell	259
Badische Anilin und Soda Fabrik <i>v.</i> Levinstein	260		Boydell <i>v.</i> Jones	128
Bahama Islands, <i>In re</i>	258, 259		Bradbury <i>v.</i> Dickens	46, 56
Baily <i>v.</i> Taylor	89		Bray <i>v.</i> Ford	223, 227
Baldwin <i>v.</i> Elphinston	152		Breay <i>v.</i> Royal British Nurses' Association	35, 134
Bankes <i>v.</i> Allen	129		Brinsmead <i>v.</i> Harrison	219
Banning <i>v.</i> Perry	220, 221		British Empire Typesetting Co. <i>v.</i> Linotype Co.	152
Barclay <i>v.</i> Pearson	26		Bromage <i>v.</i> Prosser	103
Barrett <i>v.</i> Long	161, 224		Brook <i>v.</i> Rawl	201
Baxter <i>v.</i> Nurse	65		Brooks <i>v.</i> Religious Tract Society	116
Beal, <i>Ex parte</i>	117		Brown <i>v.</i> Cooke	96, 97
			— <i>v.</i> Croome	18
			Brunswick (Duke of) <i>v.</i> Harmer	156
			Brunswick (Duke of) <i>v.</i> Pepper	220
			Bryce <i>v.</i> Rusden	188
			Burnett <i>v.</i> Tak	200
			Butterworth <i>v.</i> Robinson	91
			Buxton <i>v.</i> James	93
			Byrne, <i>Ex parte</i> ; <i>re</i> Burdett	47

C.		D.	
	PAGE		PAGE
Caird <i>v.</i> Sime	81, 84	Daines <i>v.</i> Hartley	136
Caminada <i>v.</i> Hulton	25	Davis <i>v.</i> Foreman	52
Campbell <i>v.</i> Spottiswoode	187	— <i>v.</i> Miller and Fairley	82
Capital & Counties Bank <i>v.</i> Henty 124, 135, 138, 141, 159		— <i>v.</i> Shepstone	180, 188
Carter <i>v.</i> Leeds Daily News and Jackson	213	Davison <i>v.</i> Duncan	164
Cary <i>v.</i> Kearsley	107	De Bensaude <i>v.</i> Conserva- tive Newspaper Co. . . .	226
Cate <i>v.</i> Devon & Exeter Constitutional Newspaper Co., Limited	101, 102	De Crespigny <i>v.</i> Wellesley	191
Chaloner <i>v.</i> Lansdown	170	Delany <i>v.</i> Jones	18
Chance <i>v.</i> Beveridge	154	Devenish <i>v.</i> Waters	54
Chaplin <i>v.</i> Clarke	40	Devereux <i>v.</i> Clarke & Co. . . .	210
Cheltenham & Swansea Railway Carriage Co., <i>In re</i>	259	Dickens <i>v.</i> Lee	111
Chilton <i>v.</i> Progress Printing & Publishing Co. . . .	88	Dicks <i>v.</i> Yates	41, 43, 94, 100, 101
Churchill <i>v.</i> Hunt	128	Dillon <i>v.</i> Balfour	158
Clark <i>v.</i> Molyneux	159, 161	Donaldson <i>v.</i> Beckett	87
Clarke <i>v.</i> Price	52	Donoghue <i>v.</i> Hayes	128
—, <i>Ex parte</i>	73	Du Bost <i>v.</i> Beresford	128
Clarkson <i>v.</i> Lawson	192	Duncan <i>v.</i> Thwaites	166
Clay <i>v.</i> Roberts	129	Duncombe <i>v.</i> Daniell	225
— <i>v.</i> Yates	32	Dunn <i>v.</i> Devon & County Newspaper Co. . . .	218
Clement <i>v.</i> Lewis	180		
Clements, <i>In re</i> , Republic of Costa Rica <i>v.</i> Erlanger	258	E.	
Coats <i>v.</i> Chadwick	261, 262	Earl of Lytton <i>v.</i> Devey	81
Colburn <i>v.</i> Patmore	33, 53, 145	Eastwood <i>v.</i> Holmes	126
Colledge <i>v.</i> Pike	208	Eaton <i>v.</i> Johns	127
Collingridge <i>v.</i> Emmott	100, 103	Eddison <i>v.</i> Dalziel	209
Colnaghi <i>v.</i> Robinson	7	Emmens <i>v.</i> Pottle	142, 147, 152
Comyns <i>v.</i> Hyde	94	English Joint Stock Bank, <i>In re</i> , <i>Ex parte</i> Harding	67
Cook <i>v.</i> Ward	155	English Joint Stock Bank, Yelland's Case	67
Cooke <i>v.</i> Hughes	135, 193	Evans <i>v.</i> Harlow	199
Cooper <i>v.</i> Stephens	82	Exchange Telegraph Co. <i>v.</i> Central News	86
Coulson <i>v.</i> Coulson	230	Exchange Telegraph Co. <i>v.</i> Gregory	87, 88, 89, 90
Cowen <i>v.</i> Hulton	44		
Cox <i>v.</i> Cooper	128	F.	
— <i>v.</i> Cox	59	Farrer <i>v.</i> Lowe & Co. and Medley	207
— <i>v.</i> Feeney	183	Farrow <i>v.</i> Wilson	66
— <i>v.</i> Land and Water Journal Co. . . .	93	Felkin <i>v.</i> Herbert	259
— <i>v.</i> Lee	141	Fleming <i>v.</i> Dollar	192, 215
Critchley <i>v.</i> Brown	207	— <i>v.</i> Newton	178
Cronmire <i>v.</i> Daily Bourse Ltd. . . .	261	Foss, <i>Ex parte</i>	7, 47
Crookes <i>v.</i> Petter	46, 55, 64		
Crown Bank, <i>In re</i>	262		

TABLE OF CASES.

xvii

	PAGE
Fox <i>v. Evening News</i>	190
— <i>v. Star Newspaper Co.</i>	222
Fox-Bourne <i>v. Vernon</i>	65, 66
Frescoe <i>v. May</i>	220

G.

Gale <i>v. Leckie</i>	58
Gibblett <i>v. Read</i>	45
Gibson <i>v. Evans</i>	211
Gilbert <i>v. Boosey & Co.</i>	61
— <i>v. The Star</i>	81
Glassington <i>v. Thwaites</i>	49
Gray <i>v. Bartholomew</i>	219
Griffith <i>v. Tower Publishing Co.</i>	58

H.

Haire <i>v. Wilson</i>	134
Halsey <i>v. Brotherhood</i>	201, 204
Hanfstaengl <i>v. Baines & Co.</i> . . .	116
Harmer <i>v. Westmacott</i>	6
Harris <i>v. Petherick</i>	228
Harrison <i>v. Bevington</i>	220
— <i>v. Pearce</i>	155
Hart <i>v. Wall</i>	140
Hatchard <i>v. Mège</i>	156
Hawkins <i>v. Tuxford</i>	36
Hebditch <i>v. Maellwaine</i>	160, 161
Henderson <i>v. Maxwell</i>	100
Hennessy <i>v. Wright</i>	209, 210
Henwood <i>v. Harrison</i>	181
Hindlip (Lord) <i>v. Mudford and others</i>	212
Hobson <i>v. Cowley</i>	67
Hogg <i>v. Kirby</i>	57, 82
— <i>v. Scott</i>	121
Holcroft <i>v. Hoggins and another</i>	51
Hope <i>v. Brash</i>	211
Hopkinson <i>v. Burghly</i>	81
Hopley <i>v. Williams</i>	228
Hunt <i>v. Clarke; In re O'Malley</i>	258, 263
Hunter <i>v. Sharpe</i>	184
Hutton <i>v. Beeton</i>	45

I.

Ingram <i>v. Lawson</i>	224
-----------------------------------	-----

J.

	PAGE
Jarrold <i>v. Heywood</i>	122
— <i>v. Houlston</i>	119
Jefferys <i>v. Boosey</i>	81
Jenoure <i>v. Delmege</i>	160
Johnson <i>v. Newnes</i>	96, 106
Johnston <i>v. The Christian Million Publishing Co.</i>	146, 153

K.

Kelly <i>v. Hutton</i>	47
— <i>v. Morris</i>	89, 109
— <i>v. O'Malley</i>	173, 174
Keyzor <i>v. Newcomb</i>	148
Kimber <i>v. Press Association</i>	166, 174, 177, 190
Knight <i>v. Barber</i>	40

L.

Labouchere <i>v. Hess</i>	81, 82
Lamb, <i>Ex parte, In re Southam</i>	167
— <i>v. Evans</i>	37, 42, 57, 69, 85, 88, 121
Latimer <i>v. Western Morning News</i>	183
Lawrence <i>v. Newbury</i>	125, 126
Lay <i>v. Lawson</i>	18, 181
Lea <i>v. Parker</i>	206
Le Fanu <i>v. Malcomson</i>	125, 133
Leslie <i>v. Young</i>	89, 91, 113
Lewis <i>v. Walter</i>	174
Leyman <i>v. Latimer and others</i>	195
Licensed Victuallers' Newspaper Co. <i>v. Bingham</i>	42
Liverpool General Brokers' Association <i>v. Commercial Press Bureaux</i>	100
Liverpool Household Stores Association <i>v. Smith</i>	229
London Printing and Publishing Alliance <i>v. Cox</i>	100
Low <i>v. Routledge</i>	100
Lowe <i>v. Walter</i>	65
Luckumsey Rowji <i>v. Hurbun Nursey</i>	238
Lynch <i>v. Knight and Wife</i>	224
Lynvi Coal Co., <i>Ex parte</i>	67

M.		PAGE			PAGE
Macdougall v. Knight	165,	175, 221	Nicols v. Pitman	. . . .	84
Machado v. Fontes	. . . .	154	Nottage v. Jackson	. . . .	100, 118
Mackenzie v. Harris	. . . .	219	O.		
Maclaren v. Davis	. . . .	227	O'Brien, <i>Ex parte</i>	. . . .	241, 251
Macleod v. Wakley	. . . .	185	—— v. Salisbury	. . . .	196
MacNee v. Persian Investment Corporation	. . . .	22	Ogle v. Brandling	. . . .	260
Malachy v. Soper and another	202,	204	O'Shea v. O'Shea and Parnell	. . . .	266
Malan v. Young	. . . .	260	Owen v. Greenberg	. . . .	31
Mallon v. Smith	. . . .	149	Oxley v. Willis	. . . .	218
Mander v. Ridgway	. . . .	40	P.		
Maple & Co. v. Army and Navy Stores	. . . .	94	<i>Pall Mall Gazette, In re</i>	. . . .	261
Marcus v. Mayers	. . . .	36	Palmer v. Wick S.S. Co.	. . . .	33
Marks v. Conservative Newspaper Co.	. . . .	215	Pankhurst v. Sowler	. . . .	174
Martin v. Kennedy	. . . .	220, 221	Parker v. Prescott	. . . .	150
—— v. Price	. . . .	119	Parmiter v. Coupland	. . . .	182
Martindale, <i>In re</i>	. . . .	257, 258, 259	Parnell v. Wright	211, 212, 224,	225
Maxwell v. Somerton	. . . .	115	Pater v. Baker	. . . .	201
Mayhew v. Maxwell	. . . .	104, 105	Patmore v. Colburn	. . . .	54
Mayor, etc., of Manchester v. Williams	. . . .	132	Pearce, <i>In re</i>	. . . .	30
McGregor v. Thwaites	. . . .	166	Percival (Lord and Lady) v. Phipps	. . . .	81
McPherson v. Daniels	. . . .	191	Peters v. Bradlaugh	. . . .	188
Mellin v. White	. . . .	200, 203	Petty v. Taylor	. . . .	38, 100
Mellor v. Thompson	. . . .	260	Pike v. Nicholas	. . . .	112, 121
Melville v. Mirror of Life Co.	. . . .	118	Planché v. Colburn	. . . .	58
Merivale v. Carson	. . . .	185, 186	Plating Co. v. Farquarson	. . . .	20
Metropolitan Music Hall v. Lake	. . . .	265	Platt v. Walter	. . . .	50
Metropolitan Saloon Omnibus Co. v. Hawkins	. . . .	132	Praed v. Graham	. . . .	223, 227
Millar v. Taylor	. . . .	87	Prince Albert v. Strange	70, 81	
Monson v. Tussaud	. . . .	128, 228	Pulbrooke, <i>Ex parte</i>	. . . .	250
Morgan v. Lingen	. . . .	128	Purcell v. Sowler	. . . .	183
Morris v. Wright	. . . .	110	Q.		
Muddock v. Blackwood	. . . .	120, 122	Quartz Hill Consolidated Gold Mining Co. v. Beall	. . . .	229
Mulligan v. Cole	. . . .	19	R.		
Munster v. Cox	. . . .	220	Ratcliffe v. Evans	19, 199, 200	201, 204
N.			Ravenhill v. Upcott	. . . .	202, 204
Nazarbek v. Sevasley	. . . .	51	Reg. v. Allison	. . . .	250
Neville v. Fine Arts Insurance Co.	. . . .	19, 138, 139, 160	—— v. Bradlaugh	. . . .	236

TABLE OF CASES.

xix

	PAGE
Reg. <i>v.</i> Coghlan . . .	128, 246
— <i>v.</i> Cooper	151
— <i>v.</i> Gray	166
— <i>v.</i> Hicklin	242, 243
— <i>v.</i> Hoggans	254
— <i>v.</i> Holbrook and others	234
— <i>v.</i> Humphrey	24
— <i>v.</i> Labouchere	194, 238, 248
— <i>v.</i> Most	246
— <i>v.</i> Payne and Cooper	258, 264
— <i>v.</i> Ramsey & Foote	235, 242
— <i>v.</i> Sullivan	245
— <i>v.</i> Topham	238
— <i>v.</i> Ward	246
Rex <i>v.</i> Clerk	125, 152
— <i>v.</i> Critchley	238
— <i>v.</i> Holt	153
— <i>v.</i> Knell	152
— <i>v.</i> Wright	173
Richardson <i>v.</i> Gilbert . .	97
Ridgway <i>v.</i> Smith	211
Riordan <i>v.</i> Wilcox and others	183
Risk Allah Bey <i>v.</i> Johnstone	172, 217
Roach <i>v.</i> Garvan, <i>re</i> Read & Hugginson	257
Royal Aquarium Co. <i>v.</i> Par- kinson	161
Rumney <i>v.</i> Walter	177
— <i>v.</i> Wright	212
Russell <i>v.</i> Notcut	137
— and another <i>v.</i> Web- ster	130, 198

S.

Sagar <i>v.</i> Stoddart	25
Sammons <i>v.</i> Bailey	214
Saunders <i>v.</i> Mills	163, 225
— <i>v.</i> Seyd & Kelly's Credit Index Co.	153
Saxby <i>v.</i> Easterbrook . . .	228
Scaife <i>v.</i> Kemp	212
Scott <i>v.</i> Stanford	114
Searles <i>v.</i> Scarlett	179
Seymour <i>v.</i> Butterworth . .	189
Shackell <i>v.</i> Rosier	34
Shepherd <i>v.</i> Whitaker . . .	133
Smith <i>v.</i> Johnson	104
South Hetton Coal Co. <i>v.</i>	

	PAGE
North Eastern News As- sociation	129, 132, 182, 184
Star Newspaper Co. <i>v.</i> O'Connor	52
Steele <i>v.</i> Brannan	243
Stevens <i>v.</i> Benning	58
Stiff <i>v.</i> Cassell	52
Stirling <i>v.</i> Maitland	67
Stockdale <i>v.</i> Onwhyn	91
Stone <i>v.</i> Press Association . .	299
Strauss <i>v.</i> Francis	184
Stuart <i>v.</i> Bell	160
Sweet <i>v.</i> Benning	89, 95

T.

Tarpley <i>v.</i> Blabey	150
Tidman <i>v.</i> Ainslie	155
Topham <i>v.</i> Greenside Fire- brick Co.	47
Tozier <i>v.</i> Hawkins	154
Tracey <i>v.</i> McKenna	128
Trade Auxiliary Co. <i>v.</i> Mid- dlesborough and District Tradesmen's Protection Association	89, 96, 98, 108
Tuck & Sons <i>v.</i> Priestor . . .	98
Turner <i>v.</i> Robinson	117

U.

Usill <i>v.</i> Hales	166
---------------------------------	-----

V.

Venables <i>v.</i> Fitt	173
-----------------------------------	-----

W.

Wadling <i>v.</i> Oliphant	68
Wakley <i>v.</i> Cooke	196
Walker <i>v.</i> Rostron	40
Walter <i>v.</i> Emmott	44
— <i>v.</i> Howe	93, 96
— <i>v.</i> Steinkopff	88, 90, 99, 114
Ward <i>v.</i> Beeton	45
Wason <i>v.</i> Walter	162, 183

	PAGE		PAGE
Watts <i>v.</i> Fraser & Moyes	128, 146	Williams <i>v.</i> Goose	219
Weldon <i>v.</i> Johnston	189	——— <i>v.</i> Smith	139, 178
Western Counties Manure		Williamson <i>v.</i> Freer	154
Co. <i>v.</i> Lawes' Chemical		Willmetts <i>v.</i> Harmer	195
Manure Co.	200, 201	Wilton <i>v.</i> Brignell	211
Whitaker <i>v.</i> Scarborough		Woodgate <i>v.</i> Ridout	188
Post	212	Woods <i>v.</i> Johnstone	62
White <i>v.</i> Mellin	199, 200	Wright <i>v.</i> Tallis	92
Whitney <i>v.</i> Moignard	162, 225	Wyatt <i>v.</i> Barnard	89
Whitwood Chemical Co. <i>v.</i>			
Hardman	52		
Williams <i>v.</i> Byrne	66		
——— <i>v.</i> Cartwright	154		

Z.

Zierenberg <i>v.</i> Labouchere	210
---------------------------------	-----

LAW OF THE PRESS.

PART I.

CHAPTER I.

REGISTRATION AND POSTAL REGULATIONS.

IN order that a newspaper may be rendered directly amenable, civilly and criminally, for any violation of the law, it is requisite first of all to provide a ready method of ascertaining and proving who is responsible for its publication. Various Acts have been passed from time to time with the object of fixing responsibility by means of imprints, registration, and so forth, and as any infringement of these enactments renders the proprietors, publishers, or printers, as the case may be, liable to heavy penalties, it is necessary first of all to direct attention to their provisions.

REGISTRATION.—The law with regard to registration now depends on the Newspaper Libel and Registration Act of 1881. For twelve years absolute anarchy had prevailed in this matter, the old Registration Act of 1798 having been repealed by the Act of 1869, and no substitute provided. In consequence of the state of affairs disclosed before the Select Committee on the Law of Libel which sat in 1879, charged, among other things,

44 & 45
Vict. c. 60.
38 Geo. 3,
c. 78.
32 & 33
Vict. c. 24.

“to inquire into the means of rendering proprietors and publishers of newspapers and journals responsible civilly and criminally for libels contained therein,” the Act of 1881 was passed. This Act extends to Ireland, but not to Scotland, and it does not, so far as registration is concerned, apply to newspapers owned by joint stock companies.

Sect. 1. DEFINITION OF A NEWSPAPER.—For the purposes of the Act a newspaper is defined as “any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days.” And further, “any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.”

Two things are to be carefully noted about these two definitions. In the first place, a large number of magazines, story-papers, papers composed of scraps of miscellaneous reading, and the like, are not “newspapers” under the Libel and Registration Act, 1881, or the Law of Libel Amendment Act, 1888, no matter at what intervals they appear, and are therefore under no obligation to register under the Act, nor can they claim the protection afforded by the Act; and in the second place, many purely business publications, such as a tradesman’s, stock-broker’s, or publisher’s circular, or a theatrical programme, or bill of the play, containing “only or principally advertisements,” might be held to be “newspapers,” and subject to registration and to all the penalties for omission or evasion of that duty, if they are “printed in

order to be dispersed at intervals not exceeding twenty-six days."

MODE OF REGISTRATION.—The registration of newspapers is placed by the Act under the direction of the Board of Trade, the "registrar" being defined as, in Sect. 1. England, "the registrar for the time being of joint stock companies," and in Ireland, "the assistant-registrar for the time being of joint stock companies," or such other person in either country as the Board of Trade may for the time being appoint. At present the place of registration for England is Somerset House, in London (Room 7), and for Ireland the Dublin Custom House.

To put the requirements of the Act into something like order, it is necessary to turn first to sect. 9, which is as follows :—

It shall be the duty of the printers and publishers for Sect. 9. the time being of every newspaper to make or cause to be made to the Registry Office, on or before the thirty-first of July, 1881, and thereafter annually in the month of July in every year, a return of the following particulars—that is to say ;—

- (a) The title of a newspaper ;
- (b) The names of all the proprietors of such newspaper, together with their respective occupations, places of business (if any), and places of residence.

The most serious defect in this very clumsily-worded section is that no provision is made in it for the immediate registration of a newspaper whose first number appears in any other month than July. A newspaper started in August or September may be regularly published for nearly a year before any necessity for registration arises under the Act. This is an especially serious omission in the case of newspapers published in

Ireland, since the imprint and similar Acts do not extend to that country. So far from being remedied by other provisions of the Act, this defect is only aggravated—indeed, the 11th section seems specially designed for the purpose of enabling newspaper proprietors to avoid the Act. That section runs as follows :—

Sect. 11. Any party to a transfer or transmission or dealing with any share of or interest in any newspaper, whereby any person ceases to be a proprietor, or any new proprietor is introduced, may at any time make or cause to be made at the Registry Office a return according to schedule B, hereunto annexed.

See Appen-
dix.

It will be observed that, under this enactment, in the event of a change in the ownership of a newspaper, the registration of the transaction is not compulsory on either the old proprietor or the new one. In ordinary cases a regard for their own interests will doubtless induce both the old and the new proprietor to see that the transfer is duly registered, but there is a class of cases in which ulterior considerations may lead them to neglect to do so. In such case the register is misleading. The victim of a libel may, after he has brought his action or proceeded with his indictment, and incurred heavy expense, find himself defeated by the registered proprietor proving that before the date of the libel he had ceased to be proprietor. This contingency may be partially guarded against in a civil action by means of interrogatories, but in criminal proceedings there is no such protection.*

* As will be seen, the French law of 1881, which was discussed almost *pari passu* with the English Act, provides for this difficulty in a couple of lines. “Toute mutation dans les conditions ci-dessus énumérées sera déclarée dans les cinq jours qui suivront.” Loi du 29 Juillet, 1881, sur la Liberté de la Presse. Article 7.

A further inconsistency between sects. 9 and 11 may be referred to. The duty of making the compulsory registration required by sect. 9 is thrown upon the printers and publishers for the time being of the newspaper. Sect. 11 in the case of a change of ownership leaves the option of registering it to "any party to the transfer or transmission," *i.e.* to the old or the new proprietor.

By sect. 10 a month's grace is allowed in making the Sect. 10. return required by sect. 9. If at the expiration of that period there is still default, "then each printer and publisher of such paper shall, on conviction thereof, be liable to a penalty not exceeding twenty-five pounds."

MISLEADING REGISTRATION.—The making of a false or misleading return is specially provided against by sect. 12, which subjects to a penalty not exceeding one Sect. 12. hundred pounds any person who shall knowingly make or cause to be made a return containing the name, as proprietor, of any one who is not a proprietor, or misrepresenting or omitting any of the particulars required to be given, whereby such return shall be misleading. This, except in cases coming within sect. 11, primarily affects the "printer and publisher," on whom the responsibility of making the return is thrown, but the same penalty is imposed on a proprietor who shall knowingly permit any such incomplete or misleading return to be made.

This very stringent section deserves more attention than it appears to have received, for some proprietors seem to regard registration under the Act of 1881 as simply another form of "imprint," and have permitted the printer or other convenient person to enter his name on the return. In all such cases the danger of a heavy penalty is incurred, and as this penalty may be sued for

by a "common informer" without the intervention of the Attorney-General, the risk is no imaginary one.

A still more serious consideration, however, is this: a proprietor who makes or is party to making a false return for the purpose of avoiding the provisions of the Act incurs the risk of invalidating his rights of ownership. If a proprietor deliberately, and for the purpose of defeating the Act, permits another person to be returned as owner, the law may treat such a return as a transfer of the property in the newspaper to that person, and it will not assist a party to the false return to reclaim and recover back his property. This is what happened in the case of *Harmer v. Westmacott*, which was a decision under the old Registration Act; but the principle seems to apply equally well to the provisions of the Newspaper Libel and Registration Act.

6 Sim. 284
(1833.)

The case of *Harmer v. Westmacott* was as follows: One Richards was the owner of a newspaper called the *Age*. Being in the King's Bench prison for debt, he asked one Bowden, a journeyman printer, to permit himself to be registered as proprietor. To this Bowden consented, and made and delivered affidavits to that effect to the Commissioners of Stamps, as required by the old Act. Afterwards Bowden, with Richards' consent, sold a moiety of the paper to Westmacott; and later on, without his consent, sold the rest to the same person. On Richards' taking advantage of the Insolvents' Relief Act, the assignees in bankruptcy filed a bill to have the sale of the *Age* set aside on the ground that the sale of the first moiety was fraudulent and of the second moiety void, since Bowden had no interest in the newspaper nor any authority from Richards to sell. The Court held that the assignee could not recover. The agreement between Richards and Bowden to register Bowden as sole proprietor was a conspiracy to defeat the policy of the law, and no relief can be given in a court of justice to those who shew that they thought proper to disappoint the policy of the law,

and to do that which the policy of the law requires should not be done.

NEGLECT TO REGISTER.—As has already been pointed out, the purchaser of a newspaper is not bound to register his proprietorship till the August following the purchase. He should, however, for his own protection, lose no time in seeing to the removal of the name of the outgoing proprietor and the insertion of his own, since otherwise his rights in the paper may be endangered. In an unreported case in the City of London Court (*Colnaghi v. Robinson*, “Newspaper Press,” vol. i. p. 174) (1867), Mr. Commissioner Kerr nonsuited the proprietor of an unregistered newspaper, in an action to recover money for advertisements, on the ground that it was “an illegal publication.” And in the event of the bankruptcy of the registered owner, it would appear that the newspaper—or rather the right to publish the newspaper, bearing the registered name—will be considered goods in the “reputed ownership” of the bankrupt within the Bankruptcy Act, and will consequently vest in the trustee in bankruptcy for the benefit of the creditors generally. 46 & 47
Vict. c. 52.

The case of *Ex parte Foss*, though decided on the old 2 De G. &
J. 230.
(1858.) Registration Act, now repealed, is in point. Mr. C. Baldwin was proprietor of the *Morning Herald*, the *Standard*, and the *St. James's Chronicle*. He assigned to one Foss, on mortgage for £7000, the plant, &c., of these newspapers in and about the premises in Shoe Lane, and also the newspapers themselves and the copyright thereof. Subsequently he granted a second mortgage to one E. Baldwin. Neither Foss nor E. Baldwin had his name entered in the Newspaper Register. Some time later an unsecured creditor levied an execution on the goods at Shoe Lane. The mortgagees gave the sheriff notice to withdraw, which the sheriff declined to do. The next day C. Baldwin was adjudicated bankrupt on his own

declaration. The Court held that, at the time the declaration was filed, the plant, &c., was not in the possession of the bankrupt, but of the sheriff, who held for the trustees; but as to the right to publish the newspapers, this was not tangible, and could not be seized by the sheriff. It was in the order, disposition, and reputed ownership of the bankrupt, with the consent of the true owners, since he was registered as "sole owner" under the Registration Act.

Sect. 1. The word "proprietor," as defined in the first section of the Act, includes "as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person."

REPRESENTATIVE PROPRIETORS.—As a rule, then, all persons interested in the ownership of a newspaper must be registered. Under certain circumstances, however, advantage may be taken of sect. 7, which provides that where, "in the opinion of the Board of Trade," individual registration may be inconvenient, "owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances," the name of one or more persons may be entered as "Representative Proprietors."

Where it is desired to take advantage of this provision it is necessary (according to the Rules drawn up at Somerset House) to send to the registrar a statement "setting forth the circumstances which render it inconvenient to register the names of all the proprietors, and giving such information as will shew that the proposed representatives are well able to meet any claims that

may arise for libel or otherwise in connection with the management of the paper."

BOARD OF TRADE REGULATIONS.—A special fee of 20s. is required on registering for the first time a representative proprietor, 10s. being the fee for an ordinary first registration, and 5s. for each annual renewal of registration. The prescribed forms can be had, either stamped with the requisite fee stamps or unstamped, on application to the Registrar at Somerset House or the Dublin Custom House. When the same proprietor owns more than one newspaper a separate registration and fee are required for each.

Two other provisions must be mentioned. By sect. 15 Sect. 15. a certified copy of an entry in, or extract from, the register of newspapers shall be conclusive evidence of the contents of the register so far as the same appears in such copy, and shall, in all proceedings, civil or criminal, be *primâ facie* evidence of all the matters appearing in it until the contrary be proved. By sect. 16 Sect. 16. all penalties under the Act may be recovered before a Court of summary jurisdiction.

PRESERVING COPIES AND IMPRINT.

Registration affects proprietors only. The printer and publisher of a newspaper are, however, equally liable for any illegal matter contained in it, and various Acts have been passed to ensure that they shall not escape.

PRESERVING COPIES.—The Act of 1869 already re- 32 & 33
Vict. c. 24.
ferred to, as consolidating and amending the law relating especially to printers, while sweeping away a host of vexatious and useless restrictions, retained two regulations applying to printers of newspapers, which must be strictly

observed by the parties concerned if penalties are to be avoided. The first of these, which dates from the last century, enjoins (sect. 29), "Every person who shall print any paper for hire, reward, gain, or profit," carefully to preserve at least one copy for a period of six months after printing, and on it he "shall write or cause to be written or printed, in fair and legible characters," the name and address of the person employing him. The penalty for neglecting this duty, or for refusing to produce the copy to "any justice of the peace" who shall require to see it, is £20. This sum is fixed and cannot be reduced, and (sect. 34) the penalty must be sued for within three months of its being incurred. 9 & 10 Vict. c. 33, however, protects printers from vexatious prosecution by requiring that the action must be taken by the Attorney-General or Solicitor-General, or in Scotland by the Lord Advocate. These sections are repealed and re-enacted by 32 & 33 Vict. c. 24, Sch. II.

2 & 3 Vict. c. 12. IMPRINT.—The second regulation is that enforcing what is called the "imprint." This is provided for by 2 & 3 Vict. c. 12, which applies, with certain exceptions, to all printed matter. All that concerns newspapers may be summarised by saying that the printer is bound under a penalty of not more than £5 *for every copy* to print in legible characters his name and address on the "first or last leaf" of the paper. Every person "who shall publish or disperse, or assist in publishing or dispersing," any paper neglecting this, is liable to the same penalty as the printer. This penalty again can only be sued for by the Attorney-General or Solicitor-General, or in Scotland by the Lord Advocate.

IRELAND.—Neither this enactment nor the preceding

one—that relating to the preservation of copies—extends to Ireland. Before the Union an Act was passed containing similar provisions to those in force in England. ^{23 & 24 Geo. 3, c. 28.} This was repealed and re-enacted by 6 & 7 Will. 4, c. 76, which Act, so far as Ireland is concerned, was entirely repealed, save as to sect. 19, by 32 & 33 Vict. c. 24.

The effect of this, combined with sect. 18 of the Newspaper Libel and Registration Act, 1881, is that in Ireland a newspaper if owned by a company would appear to have the power of placing itself outside the law. In the case of companies, as we have seen, the Libel and Registration Act does not apply; and as there is no obligation, as in England, to print on each copy the name of the printer, or to preserve a signed copy, it becomes practically impossible to discover who is responsible. * The only course open to the aggrieved party would seem to be to have recourse to discovery under 6 & 7 Will. 4, c. 76, ^{See 32 & 33 Vict. c. 24, Sch. II.} s. 19 (see p. 213).

COPIES TO BE DELIVERED.—It may be mentioned that a newspaper is a “book” within the meaning of the Copyright Act of 1842—which will be fully discussed ^{5 & 6 Vict. c. 45.} later on—so that the “publisher” is bound to deliver a copy of every issue at the British Museum in London, and “if demanded,” copies must be delivered at Stationers’ Hall for the Bodleian Library at Oxford, the University Library at Cambridge, the Advocates’ Library at Edinburgh, and the Library of Trinity College, Dublin. The penalty for non-compliance with the Act in this respect is “£5 and the value of the copy not delivered.”

POST OFFICE ACT, 1870.—By the Post Office Act, ^{33 & 34 Vict. c. 79.} 1870 (modified by the Acts of 1875, 1881, and 1891),

Sect. 7.

the "proprietor or printer" of a newspaper which is intended for transmission through the Post Office is required to "register it at the General Post Office in London at such time in each year, and in such form and with such particulars as the Postmaster-General from time to time directs, paying on each registration such fee, not exceeding 5s., as the Postmaster-General with the approval of the Treasury from time to time directs."

Sect. 7.

Under the authority of this Act successive Postmasters-General have succeeded in drawing up a somewhat complicated series of rules, any breach of which may be punished by the removal from the register of the offending newspaper: a censorship from which there is no appeal except to the Treasury. Sect. 7 of the Act, from which we have already quoted, goes on to say: "The Postmaster-General may from time to time revise the register and remove therefrom any publication not being a newspaper. The decision of the Postmaster-General on the admission to or removal from the register of a publication shall be final, save that the Treasury may if they think fit, on the application of any person interested, reverse or modify the decision."

33 & 34
Vict. c. 79.

POSTAL DEFINITION OF A NEWSPAPER.—For postal purposes a newspaper is defined by sect. 6 of the Post Office Act, 1870, as amended by 44 & 45 Vict. c. 19, and 54 & 55 Vict. c. 46, sect. 2, as follows:—

Any publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements; subject to these conditions—

That it be printed and published in the United Kingdom;

That it be published in numbers at intervals of not more than seven days;

That it have the full title and date of publication printed at the top of the first page, and the whole or part of the title and the date of publication printed at the top of every subsequent page. (This regulation applies also to "Tables of Contents," and "Indexes.")

And the following shall for the purposes of this Act be deemed a supplement to a newspaper—a publication consisting wholly or in great part of matter like that of a newspaper, or of advertisements, printed on a sheet or sheets or on a piece or pieces of paper put together at some one part of the newspaper, whether gummed or stitched up with the newspaper or not; or consisting wholly or in part of engravings, prints, or lithographs illustrative of articles in the newspaper; such publication in every case being published with the newspaper, and having the title of the newspaper printed at the top of every page; or at the top of every sheet or side on which any such engraving, print, or lithograph appears.

GENERAL REGULATIONS.—Every newspaper posted with or without supplement must, for inland circulation, be prepaid with a halfpenny postage stamp, but a packet containing two or more registered newspapers is not chargeable with a higher rate than would be chargeable on a book packet of the same weight. In addition to the statutory regulations above cited, the following general regulations are enforced by the Postal Authorities:—

Every newspaper should be so folded and covered (if posted in a cover) as to permit the title to be readily inspected.

Every newspaper or packet of newspapers must be posted either without a cover or in a cover open at both ends, and so that the same can easily be removed for the purpose of examination.

No newspaper and no cover of a newspaper may bear anything (not being part of the newspaper) except the names and addresses of the sender and the addressee, a request for return in case of non-delivery, the title of the newspaper and a reference to any page of, or place in, the newspaper to which the attention of the addressee is directed.

No unregistered publication and no article (unless it be a part or supplement of the newspaper) may be posted in the same cover with the newspaper.

In case any of the three last mentioned rules is infringed the newspaper packet is either charged as an insufficiently paid letter, or is transferred to the Parcel Post and charged with a fine of 1*d.* in addition to any deficient parcel postage, which-ever charge is the lower.

A packet of newspapers must not weigh above 5 lbs., or exceed two feet in length, or one foot in width or depth.

Papers that were already in existence in 1855 and were "stamped as newspapers" before the passing of the now repealed Act of that year may still claim the benefits of Post Office registration under the Act of 1870, although "regard being had to the proportion of advertisements to other matter therein" they do not come within the above definition.

18 & 19
Vict. c. 27.

Sect. 7.

MSS. AND PROOFS.—It may perhaps be convenient to mention here that manuscripts for press and printed proofs with corrections and instructions are subject to the Book Post regulations.

FOREIGN POSTAGE.—Newspapers posted for foreign countries and the colonies come under the postal regulations concerning "Printed Papers," as do also manuscripts intended for the press, "when sent with the proofs of the same," and proofs corrected in manuscript. The charge for "all places abroad" is one halfpenny for every 2 oz., the limit of weight being 5 lbs. for British Colonies, and 4 lbs. for foreign countries in the Postal Union.

An internal tax of two kreuzer, which is not a postal charge, is made by the Austrian Government, on the delivery of all newspapers reaching the empire from other countries.

There is an old Act of 1837 which, although largely superseded by the Act of 1870, contains some still un-^{7 Will. 4, & 1 Vict. c. 36.} repealed provisions, notably sect. 5, under which persons^{Sect. 5.} enclosing in newspapers "letters, papers, or things," or writing on them or on their covers "unauthorized communications or marks" are liable, at the option of the Postmaster-General, "to be prosecuted as for a misdemeanour." The Telegraph Act, 1868, empowers the^{31 & 32 Vict. c. 110.} Postmaster-General to make special arrangements for the transmission by wire of news at reduced rates to the proprietor or a publisher of "any public registered newspaper."

CHAPTER II.

*ADVERTISEMENTS—"PRIZE COMPETITIONS"—
LOTTERIES, ETC.*

SPEAKING generally there is no distinction in law between advertisements and the rest of the matter of which a newspaper is made up, and the proprietor or publisher is liable civilly and criminally for any libellous or otherwise illegal matter published as an advertisement, just as if it had appeared as a letter to the editor, as a leading article or editorial paragraph, or among the ordinary news. Libel, Slander of Title, Contempt of Court, and Infringements of the Lottery Acts are the most usual press offences under this head.

LIBEL IN ADVERTISEMENTS.—As regards defamatory matter appearing in an advertisement, the law governing such cases will be found in its proper place in the chapters devoted to libel. The responsibility of a manager with regard to advertisements closely resembles that of the editor in the case of "Letters to the Editor," although the danger is greater in the former case than in the latter, for an advertisement, drawn up from motives of spite and malice, and containing charges that would never be inserted as news or as a letter, may yet be accepted and permitted to appear through the carelessness of a clerk. Some advertisements come under the

protection conferred by the Law of Libel Amendment ^{51 & 52} Act, 1888, which (sect. 4) enacts that notices or reports ^{Vict. c. 64.} issued "for the information of the public," "at the request of any government office or department, officer of state, commissioner of police, or chief constable," shall be privileged unless published or made maliciously; and as it is difficult to see how a report could be issued for the information of the public, at the request of an official, and at the same time published maliciously by the newspaper, it may, we think, safely be taken that the privilege in such cases is absolute. There is also a large class of so-called "legal" advertisements, "warnings," and "notices" to the public, issued by private persons. Some of them are the emanations of personal spite and malice, and to them of course no sort of privilege attaches as far as the advertiser is concerned; others are published under such circumstances as bring them within the rule concerning "privileged occasion" (see p. 157); they are issued by or at the request of some one interested in the subject, and, if published *bonâ fide* and without malice, they are privileged.

A few decisions as to libels in advertisements may be cited here as illustrations of the sort of libels likely to appear in advertisements, and of the views of the Court regarding them. In some of the cases the action was against the advertiser, not the newspaper, but they are not the less important on that account, since, whether or not the newspaper may under certain circumstances have a good defence where the advertiser has none (see *infra*, p. 32), it is certain that where the advertiser is legally justified in forwarding an advertisement to a newspaper, the newspaper is legally justified in publishing it.

- 4 Esp. 191. The first reported case on this point is *Delany v. Jones*.
 (1803.) Mrs. Delany advertised in a newspaper, offering a reward for information which would enable her to prove the marriage of James Delany previous to a certain date, the innuendo being that the plaintiff had committed bigamy. Lord Ellenborough, C.J., directed the jury that, although such a publication conveyed an impression injurious to the plaintiff, yet if published *bonâ fide* with a view of investigating a fact in which the party publishing it was interested, it was not a libel. (N.B. In
 4 A. & E. 795.
 (1863.) *Lay v. Lawson*, Lord Denman, C.J., expressed "great doubt" whether Mrs. Delany's interest in this case could justify the offer of a reward in a newspaper.)
- 2, Starkie, 297.
 (1817.) *Brown v. Croome* is another of Lord Ellenborough's cases. A commission had been taken out against Brown in bankruptcy, and Croome, acting as solicitor under the commission, issued an advertisement in a Gloucestershire newspaper (that being the county in which Brown and most of his creditors resided), summoning a meeting of creditors and charging the plaintiff with serious irregularities, one being that he had given dishonest preference to a firm in which he had a financial interest. There was no plea of justification on the record. Lord Ellenborough held that, while it was competent to the petitioning creditors and to the solicitor under the commission to convene the creditors for the purpose of consultation, the defendant was not justified in publishing the advertisement to the world, when all the communication that was necessary might have been made in a manner less injurious. If it could have been shewn that an advertisement in the Gloucester paper was the only possible means of communicating notice, it might be sufficient to vindicate the mode. Also, a communication sufficient for the purpose might have been made in measured language. The want of proper caution had rendered the publication actionable.

DEFAMATORY MEANING.—In a number of modern cases the Courts have gone still further, and have ruled that certain forms of words very usual in advertisements are not in themselves capable of a defamatory meaning, and should not be allowed to go to the jury

unless there is evidence that, in the particular circumstances of the case, the words are calculated to injure the plaintiff. But, although not defamatory of individuals, and therefore not sufficient to sustain an action of libel, such notices, if they are false and malicious, and if they produce actual damage, will afford ground for an action analogous to slander of title. (See *infra*, p. 198.)

In *Mulligan v. Cole and Others*, the officers of the Walsall Science and Art Institute issued a notice in a local newspaper to the effect that the plaintiff's connection with the institute had ceased, and that he was "not authorized any longer to receive subscriptions on its behalf," the innuendo being, "meaning thereby that the plaintiff falsely assumed and pretended to be authorized," &c. At the trial, the judge (Quain, J.) directed a nonsuit, on the ground that there was no evidence to go to the jury that the advertisement bore the meaning imparted to it. A rule nisi having been obtained for a new trial on the ground of misdirection, the case came before the Divisional Court, which held that the nonsuit was right. Mellor, J., said there was no question to go before the jury; there was nothing in the evidence or in the language of the advertisement to shew that it was not perfectly *bonâ fide*. Lush, J., "entertained considerable doubt," but he came to the conclusion that the words were not capable of any defamatory sense. "The case," he added, "comes very near the dividing line, so near as to have raised doubts in my mind."

And see *Nevill v. The Fine Arts Insurance Co.* (*infra*, p. 139). (1897.)

In *Ratliffe v. Evans*, the plaintiff carried on business at Hawarden, under the name of Ratliffe & Sons, and the defendant, the proprietor of the *Flint County Herald*, published a statement to the effect that he had ceased to carry on the business, and that the firm no longer existed. The jury found that the statement was false, that it was not published *bonâ fide*, and that the plaintiff suffered, through its publication, damage to his business. On these findings a verdict for the plaintiff was entered. The defendant appealed, on the ground that the words were not capable of a defamatory meaning, but the Court of Appeal (Lord Esher, M.R., Bowen and Fry, L.JJ.)

L. R. 10
Q. B. 549.
(1875.)

(1897.)
A. C. 68.

(1892.)
2 Q. B. 524.

sustained the verdict. "That an action will lie for oral or written falsehoods not actionable *per se*, nor even defamatory, when they are maliciously published, when they are calculated in the ordinary course of things to produce, and when they actually do produce, actual damage, is established law. . . . Such an action is not one of libel or of slander, but an action on the case for damage wilfully and intentionally done without just occasion or excuse, analogous to an action for slander of title" (*per* Bowen, L.J.).

CONTEMPT OF COURT IN ADVERTISEMENTS.—Advertisements calling for evidence or commenting on pending cases are frequently tendered to newspapers. Where such advertisements appear and are held to constitute a contempt of Court (see *infra*, p. 257), it is usually the advertiser, and not the newspaper proprietor, against whom proceedings are taken; but it is not to be assumed because of this that the newspaper proprietor would not be held legally responsible if proceedings were taken against him. In all such cases he runs the risk of committal. His responsibility is not, however, so extensive as that of the advertiser; and though the practice of the Courts varies very much according to the disposition and more especially the temper of the judge, the true limit of the newspaper proprietor and publisher's liability is best stated in the judgment of the Court of Appeal in the important case of *The Plating Company v. Farquarson*.

17 Ch. D.
50.
(1881.)

That was a case of infringement of a patent, in which the defendants, pending an appeal, issued an advertisement inviting subscriptions and offering a reward to any one who would produce certain evidence material to their case. The plaintiff moved to commit the proprietors of the *Birmingham Daily Post*, in which the advertisement had appeared. Jessel, M.R., held that there was no contempt, as this was a case in which all

persons engaged in the trade had a common interest. "The printers," he said, "received the advertisements in the ordinary course of their business, with no more intention of interfering with the course of justice than the printer's boy who carried the paper to the printing man; and in order to commit them for contempt the plaintiffs must shew that the advertisements were on their face such that a person of ordinary intelligence, conducting a newspaper, must have known that the publication of them was an interference with the course of justice. Not only is nothing of the kind shewn, but, as far as I can see, there is no ground whatever for impeaching the propriety of the advertisements."

LOTTERIES.—Certain classes of advertisements are expressly forbidden by statute, as being against public policy, or as relating to illegal practices. Lotteries were declared public nuisances by an Act of 1699; and by the Lotteries Act of 1802, it is provided that any person, who shall publicly or privately keep any office or place to exercise by any way, contrivance, or device, any lottery not authorized by Parliament, shall be liable to a penalty of £500. The advertising of lotteries is expressly forbidden by two statutes. The first of these, which dates from 1823, is to the effect that any person selling, or publishing any proposal or scheme for the sale of any ticket, or chance in any lottery, "authorized by any foreign potentate or state" or any other lottery "except such as shall be authorized by this or some other Act of Parliament," shall for every such offence forfeit fifty pounds (which must be sued for by the Attorney-General) "and shall also be deemed a rogue and vagabond."

The above statute applies primarily to the lotteries themselves; the Lotteries Act of 1835 is aimed directly at advertisements in newspapers, or elsewhere. It enacts that if any person shall print or publish, or cause to be

10 & 11
Wm. 3,
c. 17.

42 Geo. 3,
c. 119, s. 2.

4 Geo. 4,
c. 60, s. 41.

6 & 7
Will. 4,
c. 66.

printed or published, any advertisement or other notice "concerning, or in any manner relating to" any foreign or other lottery "not authorized by some Act or Acts of Parliament," he shall forfeit fifty pounds, which sum, with full costs, may be recovered by action of debt, one moiety of the penalty going to the Crown, and the other to the informer. Since the passing of the first of these statutes, lotteries, as a mode of raising revenue, have been altogether abolished, so that with the exception of certain "Art Union" drawings, licensed under the Act of 1846, no lotteries, home or foreign, may under any circumstances be advertised. The "common informer," however, has no longer the power to sue or claim half the penalty. By an Act of 1845, the penalties can only be sued for in the name of the law officers of the Crown, and the whole amount recovered goes to the Crown. Occasionally a lottery is got up and advertisements issued by persons ignorant of the law. In such cases the Crown does not generally press for the penalty, a plea of inadvertence and the payment of all costs being accepted as sufficient.

9 & 10
Vict. c. 48.

8 & 9 Vict.
c. 74.

WHAT CONSTITUTES A LOTTERY ADVERTISEMENT.—It is not illegal to take shares or tickets in a foreign lottery, nor, apparently, to deal in such tickets originating in a country where lotteries are legal. And the advertisement of the prospectus of a company formed for dealing in, and making a profit by, such foreign lotteries is not necessarily a Lottery Advertisement under the Act (*MacNee v. Persian Investment Corporation*).

44 Ch. D.
306.
(1890.)

Here the defendant company was formed for the purpose of acquiring and working a concession, conferring the exclusive privilege of conducting all operations in connection

with lottery loans in Persia. It issued a prospectus setting forth the profits made by continental lotteries and announcing that the lotteries in Persia would be conducted by it on the same lines. It also stated that, under the concession, five issues had to be made yearly with minimum drawings of £10,000, and it estimated that these would return constantly increasing dividends. Plaintiff, who was a shareholder, brought an action to restrain the company from buying the concession and from circulating and advertising the prospectus. Held, that the agreement to purchase the concession was not illegal, and that the prospectus did not amount to an advertisement of a lottery within 6 & 7 Will. 4, c. 66.

BETTING.—The law affecting betting advertisements is contained in two Acts, called shortly the Betting Acts, 1853 and 1874. These two Acts must be read together, the result being considerable doubt and uncertainty as to the real meaning of the Act of 1874, which is the Act chiefly important as regards newspapers, and which read by itself would seem sufficiently clear.

The only section of the Act of 1853 which refers to advertisements is the 7th. That section is aimed at persons publishing, or causing to be published, advertisements whereby it shall be made to appear that “any house, office, room, or other place,” is open or kept for betting purposes, and any person offending against this section is liable on summary conviction before two justices to a fine not exceeding £30 and costs.

The Act of 1874 provides (sect. 3) that any person sending, exhibiting, or publishing “any letter, circular, telegram, placard, handbill, or advertisement,”

Whereby it is made to appear that any person either in the United Kingdom or elsewhere will on application give information or advice for the purpose of, or with respect to, any such bet or wager, or any such contingency as is mentioned

in the principal Act, or will make on behalf of any other person any such bet or wager; *or*,

With intent to induce any person to apply to any house, office, rooms, or place, or to any person with the view of obtaining information or advice for the purpose of any such bet or wager; *or*,

Inviting any person to make or take any share in or in connection with any such bet or wager;

Shall be subject to the penalties provided in the seventh section of the principal Act.

These penalties are a fine not exceeding £30 and costs, and "in default or in the first instance if the justices shall think fit" imprisonment for not more than two months, with or without hard labour.

There is so much uncertainty as to what constitutes a "place" under the Act of 1853, that fresh legislation on the subject is imperatively required. (See the remarks
 14 T. L. R. 340.
 (1898.) of Lord Russell, C.J., and Hawkins, J., in the recent case of *Reg. v. John Humphrey*.) When a sporting tipster inserts an advertisement giving a specific address, *e.g.* Utopia House, Fulham, to which all communications must be addressed, can that be said to be a "place" within the meaning of the Act? Such advertisements are common, but the matter has never yet been brought before the High Court for decision.

PRIZE COMPETITIONS.—There have recently been several prosecutions under the Lotteries Acts and the Betting Acts, arising from the offering by certain newspapers of prizes for competitions of various kinds, such as the supplying of the "missing word" in a given paragraph or set of verses, and the naming of the "winners" in certain forthcoming races. As regards the Lotteries Acts, the decisions seem to have turned upon

the question whether the competitions depended on pure chance or on the employment of skill and knowledge; and as regards the Betting Acts, whether the competition amounted to a bet or wager at all, and, if so, whether the newspaper office from which the coupons were issued could be regarded as a "place" under the Act of 1853.

In *Caminada v. Hulton*, the proprietor of a sporting newspaper issued weekly, at the price of one penny, in connection with the newspaper and from the same office, a "handicap book" or racing record containing general information as to horse races past and future. The last page of this book was a coupon in which six races to come were selected, and pecuniary prizes were offered to any purchaser of the book who filled up one coupon with the names of six, five, or four winners, and returned the coupon to the office within a limited time and under certain specified conditions. On cases stated by a magistrate, it was held that this was not an invitation by advertisement to take a share in connection with a bet within sect. 3, sub-sect. 3, of the Betting Act, 1874, nor a proposal and scheme for the sale of chances in a lottery within sect. 41 of Lottery Act, 1823. "There is no contrivance or device to obtain money by chance or by anything analogous to chance, and, in my judgment, what is done here nowhere approaches the description of a lottery. It might be said, although established with difficulty, that this was a bet, on the ground that a person has paid a penny by way of backing six particular horses to win six particular races; but when one comes to consider more fully what the nature of the transaction is, even that absurd notion of a bet would not be applicable. Clearly it is not a bet at all. Any person who gets hold of one of these pieces of paper becomes entitled, according to the terms of this arrangement, to get a prize of a large sum of money in the event of his succeeding in guessing the names of the winners of the six particular races; it is really not a bet; it is a scheme—a device—for the purpose, no doubt, of furthering the business which the respondent carries on" (*per Day, J.*). 60 L. J. (M. C.) 116. 46 L. T. 572. (1891.)

Sagar v. Stoddart was a somewhat similar case. The defendants issued coupons, attached to a sporting paper, to be filled (1895.) 2 Q. B. 474.

in with the names of the first four horses in a certain race, a prize of £100 being promised for the correct answer. The first coupon was free, but for every coupon filled up after the first the purchaser paid a penny. The defendants were prosecuted, under the Lottery Acts, for (*inter alia*) publishing a proposal or scheme for the sale of tickets and chances in a lottery; also, under the Betting Act of 1874, for publishing an advertisement inviting all who read it to make bets and wagers on events and contingencies relating to horse-races. On cases stated by a magistrate, the Court held (relying on *Caminada v. Hulton*) that the transaction did not amount to betting, and that there was no lottery, apparently on the ground that skill and knowledge were required for the correct filling up of the coupons.

(1893.) *Barclay v. Pearson* dealt with "missing word" competitions.
 2 Ch. 154. The defendant, who was the proprietor of *Pearson's Weekly*, carried on in connection therewith a competition under the following conditions. He published in his paper a paragraph omitting the last word. In the same paper he printed a coupon with a direction that persons wishing to enter the competition must cut out the coupon, fill in the word missing from the paragraph, and send it, with a postal order for 1s., to the office of the paper. It was also stated that the missing word was in the hands of an accountant, in a sealed envelope, and that the whole of the money received would be divided equally among those who filled in the word correctly. A special case was stated upon the following question, among others: Whether the competition was illegal under any of the statutes against lotteries or wagers? It was argued that the competition involved the employment of skill and intelligence, but Stirling, J., being of opinion that it was intended to end in a distribution of prizes, and that the distribution took place by chance, held that the competition constituted a lottery within the meaning of 42 Geo. 3, c. 119, and was illegal.

STOLEN PROPERTY.—Advertisements offering a reward for stolen or lost property come in certain cases under the Larceny Act, 1861. Sect. 102 of the Act is to the effect that any one who shall publicly advertise a reward

24 & 25
 Vict. c. 96.
 Sect. 102.

for the recovery of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any word purporting that no questions will be asked, or that no attempt will be made to seize or make inquiry after the person producing the property; or who shall promise or offer to any pawnbroker, or other person who may have bought or advanced money on the property, to return the money so paid or advanced, or any other money as a reward; or who shall print or publish such advertisement, shall forfeit the sum of £50 for every offence, to any person who shall sue for the same. It may be noticed that the £50 penalty is fixed in amount and cannot be reduced by the Court.

Here again, as in the case of lottery advertisements, the power to prosecute has been limited by a later enactment. 33 & 34 Vict. c. 65, provides that no action shall be brought against a newspaper under sect. 102 of the Larceny Act, 1861, unless with the assent in writing of the Attorney-General or the Solicitor-General. It is most important, however, to notice that the word "newspaper" in this Act has a comparatively restricted meaning, being limited in sect. 2 to "a newspaper as defined for the purposes of the Acts for the time being in force relating to the carriage of newspapers by post." In other words, all newspapers appearing at more than weekly intervals are excluded. All others are still open to the attentions of the "common informer." It is further provided that the action must be brought within six months of the date when the forfeiture was incurred; that is to say, of the date of publication.

FREE INSURANCE COUPONS.—We have seen, in the case of lotteries, how modern enterprise has involved

certain newspapers in difficulties with the law, not merely for the offence of advertising lotteries, but for actually conducting lotteries for their own profit. Similarly, when the practice of issuing with a newspaper a free insurance coupon guaranteeing a sum of money to the holder in case of injury or death resulting from a railway or other accident first became common, it was soon pointed out that this was in effect a "policy of insurance" under the Stamp Act of 1870, sect. 118 of which provides that "every person who . . . makes, executes, or delivers out or pays, or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy which is not duly stamped, shall forfeit the sum of twenty pounds." To stamp all the coupons in the case of newspapers was clearly impossible, as well as altogether destructive of profit to the newspapers; but a solution of the difficulty was discovered in the analogous provision that had been made by two private Acts for the compounding of the stamp duties in the case of railway insurance tickets. Accordingly, in the Revenue Act of 1889, provision was made for the quarterly payment of a lump sum by way of composition for such duty. This clause was repealed by the Stamp Act, 1891, and fresh clauses enacted as follows:—

33 & 34
Vict. c. 97,
s. 118.

52 & 53
Vict. c. 42,
s. 20.

54 & 55
Vict. c. 39.

- Sect. 116. (1) Where any person issuing policies of insurance against accident shall, in the opinion of the Commissioners, so carry on the business of such insurance as to render it impracticable or inexpedient to require that the duty of one penny be charged and paid upon the policies, the Commissioners may enter into an agreement with that person for the delivery to them of quarterly accounts of all sums received in respect of premiums on policies of insurance against accident.

- (2) The agreement shall be in such form and shall contain such terms and conditions as the Commissioners may think proper, and the person with whom the agreement is entered into shall observe the rules in the second part of the second schedule of this Act.
- (3) After an agreement has been entered into between the Commissioners and any person and during the period for which the agreement is in force, no policy of insurance against accident issued by that person shall be chargeable with any duty, but in lieu of and by way of composition for that duty there shall be charged on the aggregate amount of all sums received in respect of premiums on policies of insurance against accident a duty at the rate of five pounds per centum as a stamp duty.
- (4) If the duty charged is not paid upon the delivery of the account it shall be a debt due to Her Majesty from the person by or on whose behalf the account is delivered.
- (5) In the case of wilful neglect to deliver such an account as is hereby required or to pay the duty in conformity with this section, the person shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

The definition of a policy of insurance against accident was also amended in the Stamp Act of 1891, and further amended in the Finance Act of 1895—

The expression "policy of insurance against accident" ^{54 & 55}
means a policy of insurance for any payment agreed to be ^{Vict. c. 39,}
made upon the death of any person only from accident or ^{s. 98.}
violence or otherwise than from a natural cause, or as compensation for personal injury, and includes any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication

containing the notice only from accident or violence, or otherwise than from a natural cause.

58 Vict. . . . It is hereby for the removal of doubts declared that a
c. 16, s. 13. policy of insurance for any payment agreed to be made during the sickness of any person, or his incapacity from personal injury within the meaning of the Stamp Act, 1891, includes a notice or advertisement in a newspaper or other publication which purports to insure such payment.

INDECENT ADVERTISEMENTS.—An Act was passed in
52 & 53 1889, prohibiting the affixing, giving away in the streets,
Vict. c. 18. or exhibiting of any picture, or printed or written matter of an indecent or obscene character. This Act, as is clear from its wording, in no way affects newspapers or other publications. An attempt which was made to convict a newspaper under its provisions was dismissed by the magistrates, and the dismissal affirmed by the Queen's Bench Division: *In re Pearce*.

Times,
March 26,
1890.

RIGHT TO REJECT ADVERTISEMENTS.—It follows from the fact that newspapers are liable civilly and criminally for advertisements appearing in their columns that the publisher or editor is entitled to reject improper advertisements sent in for publication or to alter them so far as to remove any libellous or other illegal matter from them. Even in the case where a certain column or page has been leased to an advertiser or to an agent for a given period, such refusal to insert will not amount to a breach of contract, the contract really being only to insert such advertisements as the newspaper may legally publish. Accordingly when the editor or publisher of a newspaper refuses with good cause to insert advertisements sent by the lessee of a column or page, that will not prevent the newspaper recovering at any rate for the advertisements already inserted in pursuance of the contract, and probably the whole sum agreed to be paid for the lease of the

column or page. And if the advertisements have been paid for in advance, especially where the money was accepted in ignorance of their illegal nature, the sum so paid cannot be recovered by the advertiser, although the advertisements are not inserted.

This principle is well illustrated in the recent case of *Owen v. Greenberg*. The plaintiff, who carried on the business of a quack, calling himself "Dr. Allen, U.S.," "The Irristum Company," and "The Continental Drug Company," sued the defendants for breach of contract in refusing to insert his advertisements in a newspaper called *Pick-Me-Up*. It appeared that the newspaper had recently changed hands, and that the new proprietors on becoming aware of the character of Owen's advertisements refused to permit them to appear, although a series had been paid for in advance. He now sought to recover back the money he had paid in respect of the time during which the advertisements did not appear, and damages for their non-insertion. The defendants paid the money in dispute into Court, but pleaded also that the advertisements were of an illegal and immoral nature, and that the plaintiff was not entitled to maintain any action in respect thereof. It was given in evidence that similar advertisements appeared in "any number of respectable papers," and were scattered broadcast through the press. The jury, however, found that the contract was an immoral one, and the Judge (Darling, J.) ordered the money paid into Court to be paid back to the defendants. In directing the jury his lordship said, "It was said that the advertisements were of an illegal and immoral nature, and if the contract to insert them was of that nature, the money the plaintiff had paid could not be recovered back. The question was:—Was it intended by the advertisements to convey that the medicine would procure miscarriage or abortion? To procure abortion, or to attempt or counsel or assist to procure it, was a criminal offence, and therefore you would expect any advertisement relating to it to be in very guarded terms. If the advertisement advised the taking of something for the purpose of procuring abortion, it was undoubtedly forbidden by law."

Times,
March 10,
1898.

1 H. & N.
73.
(1856.)

The case of *Clay v. Yates*, although not the case of an advertisement, may also be cited, as it was decided on similar grounds. There the plaintiff, a printer, agreed to print a book for the defendant. When the body of the book had been set up, the defendant forwarded to the printer a dedication which the plaintiff believed--and which the jury afterwards found--to be libellous. Thereupon the plaintiff refused to print the dedication, and demanded payment for the work already done. This the defendant refused, but on action it was held that the plaintiff was entitled to refuse to print libellous matter, and that, notwithstanding that refusal, he was entitled to recover under the agreement to print the book for the work done by him in fulfilment of that agreement. Martin, B., in his judgment said, "I cannot doubt that in this case, although the contract has never been performed, yet as the work was commenced on the retainer of the defendant, and in ignorance that part of it was unlawful, a duty arises to pay the plaintiff that part which he has performed." And Bramwell, B., said that the contract was to print a treatise and a dedication. "That imposed on the defendant the obligation of furnishing a dedication such as the plaintiff could by law print."

RESPONSIBILITY FOR ILLEGAL MATTER.—As has been said, the general rule is that where illegal matter is published in an advertisement, both the advertiser and the newspaper proprietor are liable, and proceedings may be taken against either or both of them. This rule, however, is subject to certain limitations. One of these has already been pointed out as to advertisements containing contempts of Court; and it will be seen, later on, that the newspaper proprietor in the case of a libel appearing in an advertisement may possibly have a valid defence where the advertiser has none, especially in cases where any defamation the advertisement may have contained was *primâ facie* privileged. Independent of this, however, even where the newspaper proprietor is jointly responsible with the advertiser, he may in some cases have a remedy

See p. 160.

over against the advertiser for any loss which he may have suffered through the illegal matter in the advertisement. Thus in the case of an advertisement, on the face of it of an altogether innocent and proper character, which afterwards proves in some way to convey a libellous imputation on some one; or in the case of an advertisement or notice which the newspaper proprietor or his agent was induced to believe was of such a character that it was the legal right or even the duty of the advertiser to issue it, but which afterwards proved to be false and malicious, it is probable that the proprietor of the newspaper, if successfully proceeded against by the injured party, could recover from the advertiser the damages and costs to which he has been put. In a sense, the advertiser and the publisher are joint wrong-doers, and, as Lord Lyndhurst, C.B., said, in the case of *Colburn v. Patmore*, which will be referred to later (p. 54), there is "no case in which a person who has committed an act declared by the law to be criminal has been permitted to recover compensation against a person who has acted jointly with him in the commission of the crime." But this rule only applies in cases where the act is one of an obviously illegal character (*Betts v. Gibbins*), and the case of an innocent publisher seems very clearly to come within the exception laid down by Best, C.J., in *Adamson v. Jarvis*, and cited with approval by Lord Herschell, L.C., in *Palmer v. Wick S.S. Co.*, that "from reason, justice, and sound policy, the rule that wrong-doers cannot have redress or contribution against each other, is confined to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act;" and again, "every man who employs another to do an act

1 C. M. &
R. 73.
(1834.)

2 A. & E.
57.
(1834.)

4 Bing. 73.
(1827.)
(1894.)
A. C. 324.

which the employer appears to have a right to authorize him to do, undertakes to indemnify him for all such acts as would be lawful if the employed had the authority he pretends to have."

INDEMNITY.—It is usual for the manager of a newspaper, when an advertisement is proffered which depends for its legality on the *bona fides* or the authority of the advertiser, to require from him an indemnity holding the newspaper harmless against the consequences of a possible libel or other proceedings. Such an indemnity will probably hold good where the manager has exercised all due caution. But if he publish an advertisement which he knew, or ought to have known, to be illegal, either as being libellous or otherwise objectionable, or as being contrary to any of the special Acts mentioned in this chapter, then no indemnity will be of any avail either to protect him against prosecution or to enable him to recover compensation from the advertiser. An indemnity given to procure a breach of the law is illegal, and cannot be recovered upon. The advertiser is not bound by it, and, if he refuses to indemnify, the Courts will not compel him to do so. The case of *Shackell v. Rosier*, although it relates not to an advertisement but to an article, is clear on this point.

2 Bing.
N. C. 634.
(1836.)

In *Shackell v. Rosier* the plaintiff was the proprietor of the *John Bull* newspaper. At the request of the defendant, Rosier, he published an article reflecting on one Chalmers, who had received the royal pardon and relief from a sentence of death for murder. Chalmers sued the plaintiff for this article, and the jury found it libellous and awarded £30 damages. In consideration of the plaintiff's publishing the article and defending the action, the defendant had undertaken to indemnify the plaintiff. After the verdict for Chalmers, Rosier

refused to carry out this undertaking. On action the Court held that the agreement to indemnify the plaintiff was given for an illegal consideration, and could not therefore be enforced.

Because, however, an indemnity given to procure the publication of a libel is invalid, it does not follow that an indemnity given after the publication, by the person who procured or directed it, is invalid too. There the breach of the law has taken place, and the person procuring the publication is jointly responsible with the person publishing, for the consequences. They have accordingly a common interest in the matter, and should an action be brought against one of them, there is nothing illegal or improper in the other undertaking to defend the action, or undertaking to pay all costs and damages.

In *Breay v. Royal British Nurses' Association*, the defendants ^(1897.) _{2 Ch. 272.} were proprietors of a newspaper called the *Nurses' Journal*. A Miss de Pledge was the honorary editor of the *Nurses' Journal*, and she, by direction of the defendants, inserted in it a report of certain matters which it was alleged was libellous. An action was brought against Miss de Pledge. The defendants undertook her defence. Held, that they were entitled to use the funds of the association for this purpose.

BREACH OF CONTRACT.—The relations between the advertiser and the newspaper manager are subject to the ordinary law of contract. A material misrepresentation of fact with regard to the circulation of the paper or to its character and position, would justify the advertiser in repudiating the contract and refusing payment. And the non-appearance of an accepted advertisement, on the day and in the position agreed upon, may cause injury to the advertiser, and constitute a cause of action for damages.

In the case of *Hawkins v. Tuxford*, heard in the Court of Common Pleas, and reported in the *Times* of December 23, 1867, the plaintiff, a miller at Belper, having decided to sell his mill, the date of the sale being fixed for December 2, 1864, gave orders for an advertisement to that effect to appear in defendant's paper, the *Mark Lane Express*, on November 21st and 28th respectively. By some mistake the advertisement did not appear on the latter date, and, in consequence, as the plaintiff alleged, the attendance was small, and no sale was effected. The jury found for the plaintiff, and awarded him £30 damages.

11 T. L. R.
327.
(1895.)

In the recent case of *Marcus v. Mayers*, the breach of contract arose from the non-appearance of an advertisement in its proper position. The plaintiff was a ladies' tailor, and the defendant the proprietor of the *Jewish Chronicle*. In May, 1894, Marcus gave a written order as follows—"Please insert my advertisement in front page of *Jewish Chronicle* for one year (52 insertions), payments to be made on dates as arranged." Terms were arranged, and the contract completed. On September 18th, plaintiff consented to allow his advertisement to appear on another page to make room for a full-page order. This went on for two weeks, after which plaintiff claimed to be restored to the position contracted for. The defendant refused, and claimed a right to shift the advertisement when the front page was otherwise occupied. At the trial plaintiff was asked as to the increase of his business resulting from the advertisement, and as to a decrease on its non-appearance. Chitty, for defendant, objected that this was too remote, and cited an American case to the effect that "the publisher of a newspaper which merely by mistake neglects to insert an advertisement of real estate, is liable only for the amount paid for the advertisement, and not for speculative damages." Kennedy, J., however, disallowed the objection, and directed the jury that the rule for assessing damages was "where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract, should be such as may fairly and reasonably be considered, either as arising naturally—*i.e.* according to the usual course of things—from such breach of contract itself, or such as may reasonably be supposed to

have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."

COPYRIGHT IN ADVERTISEMENTS.—A newspaper being a "book" under the Copyright Act, 1842 (p. 93), the advertisements in it come under the law of copyright, and disputes have arisen as to the ownership of such copyright. It is clear that, as the newspaper proprietor neither employs nor pays the advertiser, he can make no claim to the ownership of any individual advertisement appearing in his paper; but, on the analogy of the various "directory" and "list" cases (p. 89), he is entitled to copyright in the arrangement and classification on which he or his servants have expended skill and labour, and in the headings which he has given to such groups of advertisements. This was decided in the recent important case of *Lamb v. Evans*.

(1892.)
3 Ch. 462.

In *Lamb v. Evans*, the plaintiff was the proprietor of a trades' directory called the "International Guide to British and Foreign Merchants and Manufacturers," consisting chiefly of tradesmen's advertisements, arranged and classified under various headings. The defendants had been employed to collect and canvass for names and advertisements for the Continental section of the book, and, on leaving the plaintiff's employment, they became connected with a rival publication, the "Commercial Directory," to which they assisted in adding a Continental section composed largely of materials already collected and used by them for the plaintiff's "International Guide." Chitty, J., granted an injunction as regarded the headings, and also as regarded the blocks and materials obtained by the defendants whilst in the employ of the plaintiff. The defendants appealed, but the Court of Appeal (Lindley, Bowen, and Lopes, L.JJ.), upheld the judgment. "I do not see the difficulty," said Lindley, L.J., "in a publisher's having a copyright in a sheet of advertisements. I do

(1893.)
1 Ch. 218.

see a difficulty in his having a copyright in one advertisement, because, as Mr. Justice Chitty pointed out, that might prevent the advertiser from republishing his advertisement in another paper, which is absurd. But to say that it follows from that that the proprietor, say of the *Times*, has no copyright in a sheet of advertisements, so that he cannot restrain anybody from copying that sheet, appears to me a very different proposition." "With regard to the headings," said Bowen, L.J., "that they are the subject of copyright, I do not think can be disputed. They are the result of literary labour, both as regards the composition of the headings themselves, and their collocation and concatenation in the books."

(1895.)
W. N. 156. At a further stage of the same case the principle of the judgment was extended so as to include the printers of the "Commercial Directory," Chitty, J., holding that "when printers know that what they are printing is a piracy, and the purposes for which it is intended to use the pirated copies, they are tort-feasors jointly with the persons for whom such copies are printed, and are jointly liable in damages."

ARTISTIC ADVERTISEMENTS.—In these days, when distinguished artists do not disdain to execute paintings, sketches, and designs for advertising purposes, and when story-tellers and poets of a sort can be employed for the same purpose, the importance of the question of copyright in advertisements is likely to increase. In some cases these pictures, stories, or poems are executed or composed for, and become the property of, the advertiser; in some cases they are provided to order by the advertising agencies, or by the newspaper itself. In each case, naturally, the copyright is the property of the party who has purchased and paid for it; and, to protect his property in it, he should register it at Stationers' Hall in his own name, under sect. 4 of the Fine Arts Copyright Act, 1862 (*Petty v. Taylor*).

25 & 26
Vict. c. 68.
(1897.)
1 Ch. 465.

ADVERTISEMENT ORDERS TO BE STAMPED.—The

authorities at Somerset House have recently called the attention of newspaper proprietors to the fact that all advertisement orders above the amount of five pounds must be stamped under the first schedule of the Stamp Act of 1891. It is there enacted that any "agreement or memorandum of agreement, the matter whereof is above the value of five pounds, and which is made in England or Ireland under hand only or, in Scotland, without any clause of registration, and not otherwise specifically charged, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument," must bear a sixpenny stamp. The order should be stamped within fourteen days after the agreement is made. After that period a penalty of £10 may be imposed in addition to the fee for the stamp. This penalty the Commissioners have power to mitigate if they think proper. If such an order has to be produced as evidence in any civil court, and is found to be unstamped or insufficiently stamped, the judge, arbitrator, or referee is bound to take notice of the absence or insufficiency of the stamp, whereupon the amount of the unpaid duty and the full penalty of £10 and the further sum of £1 must be paid, or the document will not be received in evidence, though it may be put into the hands of a party denying the contract, for the purpose of refreshing his memory and of obtaining from him an admission of the contract (*Birchall v. Bullock*). Up till quite recently it had been very unusual to stamp such orders; but there can be no doubt that if the document is in the form of an agreement or memorandum of agreement, or even if it is only evidence of a contract, it should be stamped. It is immaterial whether the order be signed or not if

54 & 55
Vict. c. 30.

Sect. 14

(1896.)
1 Q. B.
325.

- 9 M. & W. 411. it embodies the binding terms of the contract (*Walker v. Rostron*); but a mere offer in writing, though accepted (1842.)
 4 Ex. 403, at 407. by parol, does not require a stamp (*Chaplin v. Clarke*). (1849.) Any writing, however, made with the intention of containing within itself the terms of the agreement between
 16 M. & W. 66. the parties, must apparently be stamped (*Knight v. Barber*). (1846.)

It may perhaps be added that, by Ord. xxxix. R. 8, R. S. C., a new trial shall not be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp. The same rule applies to proceedings in a County Court (*Mander v. Ridgway*). (1898.)
 1 Q. B. 501.

ILLEGAL PRACTICES AT ELECTIONS.—A number of statutory offences have been created by the Corrupt and Illegal Practices Act, 1883, and the Amending Act of 1895, and other Acts regulating parliamentary and other elections. These offences may frequently be committed in advertisements, but the whole subject is dealt with in the succeeding chapter dealing with the liabilities of proprietors (p. 70).

CHAPTER III.

PROPERTY—CONTRACTS—LIABILITIES.

PROPERTY IN TITLE.—There is no copyright in the title of a newspaper, and the registration of a name at Stationers' Hall by one person does not in any way affect the right of another person to start a newspaper under the same name. But the exclusive right to publish a newspaper bearing a certain name may be acquired, and when acquired it becomes a property which the Courts will protect. It cannot be acquired merely by prior invention or by prior registration, but only by "user and reputation." When a newspaper has been published for such a period, or under such circumstances, that the public has come to associate the name with the newspaper, the publisher acquires a property in that name, and if any other person should start a newspaper bearing the same name, or one so similar as to be likely to mislead the public, and damage the property of the person who first used it, the Courts will grant an injunction to restrain him. In some of the earlier cases there appears to have been confusion in the minds of the judges on this point, the word "copyright" being used where, from the context, it is clear that a common law right of property was meant. But in *Dicks v. Yates* the Court of Appeal^{18 Ch. D. 76.} placed it beyond doubt that the wrongful use of a title (1881.)

was not an infringement of copyright, but a Common Law fraud. Another important case is that of the *Licensed Victuallers' Mirror*.

38 Ch. D.
139.
(1888.)

In *The Licensed Victuallers' Newspaper Co. v. Bingham* the plaintiffs had, on the 3rd of February, published the first number of a newspaper, called the *Licensed Victuallers' Mirror*. On the next day they registered as proprietors at Stationers' Hall, and duly deposited copies at the British Museum. They had previous to publication advertised their intention of starting a newspaper, but had not mentioned its name. Three days later, on the 6th of February, the defendant published the first number of another paper under the same title which he registered at Somerset House and Stationers' Hall. Thereupon the plaintiffs applied for an injunction to restrain the defendant from publishing a newspaper under that name or any other name so closely resembling that one as to mislead the public. The sales of the plaintiffs' paper before the issue of the defendant's were very small. North, J., refused the injunction, on the ground that the plaintiffs' paper was not an article known in the market, or having any reputation which could induce the public to buy the defendant's paper as being that of the plaintiffs—the mere registration in itself giving no exclusive right to the name. On appeal the Court of Appeal upheld the decision. The plaintiffs, said Lindley, L.J., "must make out an exclusive right to the name. The Copyright Acts do not help them. They must, then, fall back on the old principles, and establish their right by a user which has given them a reputation. It is impossible to say that a reputation has been acquired by a mere publication for three days of a paper which, during that time, had only a very small circulation. It seems to me to be a flaw in the Copyright or Trade Marks' Acts that they do not enable a person to acquire an exclusive right to the name of a newspaper."

(1892.)
1 Ch. 218.

The case of *Lamb v. Evans* has been cited as establishing copyright in the title of a book or of part of a book. But the headings that were there decided to be copyright were not mere names or titles. They were, in the words

of Kay, L.J., "short descriptions of particular trades, each separate heading being put so that the proper catch-words occur first in alphabetical order, and each heading repeated three times in three other languages." This is quite consistent with the language of Jessel, M.R., who, in deciding *Dicks v. Yates*, said, "I do not say there could not be copyright in a title, as for instance in a whole page of title, or something of that kind requiring invention." 18 Ch. D.
76, at p.
101.
(1881.)

INFRINGEMENT OF TITLE.—To constitute an infringement of this right two things are necessary : the name of the second newspaper must be so like that of the first as to be calculated to deceive the public ; and there must be reason to believe that the first newspaper will suffer damage thereby. It is to be observed that, in deciding whether the name of the second newspaper is likely to deceive the public, the Court will take into consideration other resemblances, besides that in the names, between the two newspapers—such as the kind of type used, the manner in which the papers are advertised, the position even of the publishing offices, and indeed all circumstances likely to assist in inducing the public to believe that the two newspapers are one and the same, or that they are owned by the same person.

An important case, in which all these circumstances were discussed, is that of *Borthwick v. The Evening Post*.

In this case the facts were as follows : The plaintiff was the owner of the *Morning Post*. The defendants were a joint stock company which owned an old-established paper called *Daily Recorder of Commerce*. In December, 1887, they announced their intention of starting a new evening paper, to be called the *Evening Post*, with which the *Daily Recorder* would be incorporated. Thereupon the plaintiff applied for an injunction 37 Ch. D.
449.
(1888.)

to restrain the defendants from publishing a newspaper under that name, or under any other name of which the word "Post" formed part.

The first number of the *Evening Post* was published on the 21st of December, 1887. The words "*The Evening Post*" were printed at the head of the paper in old English type, and underneath in smaller type were printed the words "With which is incorporated the *Daily Recorder*." Amongst other circumstances dwelt upon in the course of the hearing were the following: The new paper consisted of four pages, the *Morning Post* of eight. The *Evening Post* had no advertisements on the front page; the front page of the *Morning Post* consisted entirely of advertisements. The price of the papers was the same. The office of the *Evening Post* was in Fleet Street; the *Morning Post* being published in Wellington Street, Strand. The placards issued by the two papers were printed in different colours.

Evidence was given that some twelve persons had called at the office of the *Morning Post* to ask for copies of the *Evening Post*. The defendants, on the other hand, submitted evidence to show that many London and provincial papers had had, and some still have, the word *Post* as part of their title.

On these facts, Kay, J., held that the title of the defendants' paper, and the circumstances connected with its issue, were such as to deceive the public and damage the plaintiff, and he therefore granted the injunction prayed for. The defendants appealed, and the Court of Appeal reversed Mr. Justice Kay's decision, holding that though the defendants' conduct was calculated to deceive and had deceived the public, still there was no evidence that the plaintiff had suffered any damage hitherto, and no likelihood that he would suffer any in the future through the deception. They based this conclusion chiefly on the ground that as the one was a morning and the other an evening paper, there could be no real competition between them. The appeal was allowed, but without costs.

54 L. J. Ch. 1059. See also *Walter v. Emmott* (case of the *Mail* and the *Morning Mail*), and *Cowen v. Hulton* (case of the *Chronicle* and the *Sunday Chronicle*).
(1885.)

46 L. T.
N. S. 897.

(1882.)

NATURE OF PROPERTY IN TITLE.—The exclusive right

to publish a newspaper bearing a certain title being property, it is subject to the ordinary incidents of property—that is to say, it can be freely disposed of altogether or *pro tanto* by the owner. As, however, it is incorporeal in its nature, and is also the subject of several special enactments, such as those relating to registration, etc., the usual rules of law as to property are somewhat modified in their application to it. (See “Registration,” p. 1).

The exclusive right to publish is personalty, and accordingly on the owner's death intestate it will go to his administrator, who will be trustee for the intestate's next of kin, according to the Statutes of Distribution (*Gibblett v. Read*). At the same time, though it is personal property, yet as it is a peculiar kind of personal property that cannot be bought at any time in the open market, a contract to sell it will be specifically enforced by the Court (*Hutton v. Beeton*). Like other personal property, the right to publish a newspaper would seem to be assignable without a deed; but if, along with the right to publish, the plant and premises are assigned, a deed is then necessary.

It frequently happens that the original proprietor's name forms part of the title of a publication, as, for instance, *Lloyd's Weekly London Newspaper*, or “Fraser's Magazine.” When a newspaper bearing such a title is assigned by the original proprietor, the assignment gives the assignee the right to use the original proprietor's name, and any attempt of the original proprietor to withdraw from the assignee the benefit to be derived from the use of his name will be restrained by the Court.

In *Ward v. Beeton* the defendant had been the originator and proprietor of a work called “Beeton's Christmas Annual.”

9 Mod. Rep.
459.
(1747.)

9 Jurist,
N. S. 1310.
(1863.)

L. R. 19
Eq. 207.
(1874.)

In 1869 he sold this and his other works to Messrs. Ward, Lock, and Tyler, and entered into a contract with that firm, by which, in return for a certain salary, he undertook to give all his services to that firm. He edited "Beeton's Christmas Annual" for the firm for some years; but the latter, becoming discontented with the way the work was done, in 1874 put it into another writer's hands. Thereupon the defendant issued an advertisement announcing that he had nothing whatever to do with the "Beeton's Christmas Annual" issued by the plaintiffs, and that he was preparing his usual annual, which, under the name of "Jon Duan," would be issued, not by Messrs. Ward, Lock, & Tyler, but by Messrs. Weldon & Co. Upon these facts, on the application of Messrs. Ward, Lock, & Tyler, an injunction was granted to restrain the defendant from publishing such advertisements.

3 L. T.
N. S. 225.
(1869.)

But the name must really be part of the title, not a mere addendum to it. In *Crookes v. Petter* the plaintiff and defendant agreed that the plaintiff should be editor of a newspaper to be started by the defendant, the name of which was to be agreed upon between them, and was not to be altered without mutual consent. The journal was called "*The Photographic News, a Weekly Record of the Progress of Photography, Edited by W. Crookes, F.C.S.*" Afterwards the defendant removed the latter words—"Edited by W. Crookes, F.C.S." On the application of the plaintiff for an injunction to prevent this, it was refused on the ground that these words did not form part of the title of the journal, and that consequently its removal was not an alteration of the title agreed upon between the plaintiff and the defendant. (See also *Bradbury v. Dickens*, p. 56.)

46 & 47
Vict. c. 52.

MORTGAGES OF NEWSPAPERS.—We have already pointed out that the right to publish a newspaper is "goods and chattels" within the Bankruptcy Act, and consequently if the mortgagee neglect to have himself registered under the Libel and Registration Act, 1881, in the event of the mortgagor becoming bankrupt the trustee will be entitled to claim the title, copyrights, etc.,

of the newspaper as goods and chattels in the bankrupt's possession, order, or disposition. (*Ex parte Foss*, see ^{2 De G. & J. 230.} p. 7.) (1858.)

Neglect to register, however, does not affect the mortgagee's right to the plant and premises if they are included—as they usually are—in the mortgage of the newspaper. Mortgages of the plant should be registered under the Bills of Sale Acts, unless the only plant mortgaged is fixed machinery coming within the exceptions contained in sect. 5 of the Bills of Sale Act, 1878, ^{41 & 42 Vict. c. 31.} and the mortgage also includes the newspaper premises. Mortgages of the plant separate from the premises, whether the plant is within the exceptions contained in sect. 5 or not, should for safety always be registered, though it is doubtful whether such registration is absolutely necessary (see *Topham v. Greenside Firebrick Co.* ^{37 Ch. D. 281.} and *Ex parte Byrne ; re Burdett*). (1887.)

Another point with regard to mortgages of newspapers may just be mentioned. If the owner of a share of a newspaper mortgages his share, the mortgagee takes that share subject to all equities existing between the mortgagor and the other owners of the newspaper. Further, if the mortgagee allows the other owners to incur expense in carrying on the newspaper after the mortgage, he can only claim the value of the share and profits after satisfying every claim which the other owners may have for expenses incurred, and also for interest on their capital used by them in carrying on the paper (*Kelly v. Hutton*). ^{37 L. J. Ch. 917.} In fact co-owners of a newspaper are regarded (1868.) as partners in an undertaking, and each one of them and his assignee takes subject to the partnership accounts.

JOINT OWNERSHIP OF NEWSPAPERS.—As we have

seen, what is meant by the "property" in a newspaper consists in most cases of two distinct things. It consists first of all of the right to publish the newspaper, and secondly, of the business of printing and publishing it. There are certain papers, printed and published by contract, in which the latter category is for practical purposes non-existent, the title, copyrights, and good will being the real property; but in most cases, the premises, plant, and stock constitute a large share of the capital value. The first is property in the strict sense, and may be divided among any number of joint owners. The second is a commercial undertaking, and as such would appear to come within the provisions of the Companies Act, 1862. By that statute there cannot be more than twenty partners in any business. If there are more they must register themselves as a joint stock company. In cases in which this course is not desirable, the legal difficulty may be got over in two ways. Either the whole property and business may be vested in trustees to manage for the benefit of the persons interested, or the property in the newspaper may be separated from the business of printing and publishing it, and the latter carried on by a limited number of proprietors as a distinct undertaking.

25 & 26
Vict. c. 89,
s. 4.

Joint ownership of newspapers not infrequently leads to disagreements and complications, more especially when individual members of the partnership are interested in newspapers not belonging to the partnership. In such cases there is a natural inclination on the part of the individual owner to use for the benefit of his newspaper matter obtained at the expense of the partnership. This the Court, on the application of any member of the partnership, will restrain.

In *Glassington v. Thwaites*, A. B. and C. were owners of the *Morning Herald*. A. and B. were also owners of the *English Chronicle*, an evening paper, and those two, being a majority of the partners who owned the *Morning Herald*, agreed to use matter obtained at the cost of the *Morning Herald* for the *English Chronicle*. C., who was not interested in the *English Chronicle*, applied to the Court to restrain them from doing so. The Court, on the ground that no partner is entitled to carry on for his own benefit any business in rivalry with the firm to which he belongs, granted the injunction asked for. 1 Sim. &
St. 124.
(1823.)

Another point on which disagreements and misunderstandings are common, and which also arose in the case of *Glassington v. Thwaites*, is as to the right of one newspaper to use the premises and type of another newspaper owned by a partnership of which one or more of the proprietors of the first paper are members. Such a right can only be obtained by express agreement. No length of user can entitle one person to use the personal property of another. Sometimes, again, the proprietor of one newspaper claims what is called a "share in the copyright" of another—that is the right to use matter from day to day as it appears in such other newspaper. This also can only be by agreement between the parties. There is no copyright in literary matter till it is produced and published, and accordingly there is nothing upon which user and prescription can act so as to give another a right over it. Questions of this kind usually arise where papers, which at one time belonged to the same owner, become separated. While they were in the same hands an interchange of matter would naturally take place, and when the ownership is divided, the owner of one of the papers may claim a legal right to continue the practice.

In *Glassington v. Thwaites*, above referred to, the plaintiff desired the defendants to be restrained from using the type

of the *Morning Herald* to print the *English Chronicle*. It appeared, however, that there was an express agreement between the owners of the *Morning Herald* and the owners of the *English Chronicle*, by which the latter, in consideration of an annual payment of £250, were to be entitled to use the type of the *Morning Herald*. The plaintiff's application was refused.

17 L. T.
N. S. 159.
(1867.)

In *Platt v. Walter* the plaintiffs were part owners of the *Evening Mail*, and the defendants were part owners of the *Evening Mail* and owners of the *Times*. Both the *Times* and the *Evening Mail* had originally belonged to a Mr. Walter, from whose son the plaintiffs had bought their share of the *Evening Mail*. Ever since the papers were first published, the *Evening Mail* had been printed with the type of the *Times*, and published on its premises, but there was no express agreement that this should continue. Disagreements having arisen, the owners of the *Times* refused to allow the *Evening Mail* to be printed with the *Times* type. The plaintiffs thereupon applied for an injunction to restrain the defendants from preventing this. The plaintiffs also claimed what they called a "share in the copyright" of the *Times*—a right to reproduce, in the future, in their evening paper, matter that had appeared in the *Times* in the morning. Both claims were based on long user. Vice-Chancellor Stuart refused the injunction. On appeal Lord Chelmsford, L.C., affirmed the decision. His lordship pointed out that the plaintiffs had no legal property in the type of the *Times*, that user, however long continued, could not establish such a servitude over personal property, nor could even an express agreement between previous proprietors, which would only bind those who were parties to it, and would lapse on their deaths. The circumstances disclosed a mere working arrangement which was terminable at the pleasure of either party to it. As for copyright there could be no copyright in a non-existent thing. Copyright only accrued when the matter was actually produced. Accordingly the plaintiffs could not be entitled to a share in, nor could prescription act upon, a right which was not yet in existence.

It need hardly be said that although a paper may be the organ of a party it cannot be the property of a party.

Property cannot be vested in an indefinite group of persons. It must have an owner or owners individual or corporate.

In *Nazarbek v. Sevasley* a group of Armenian refugees founded an organ called *Huntchak*, the editor of which was one Nazarbek, who appears to have contributed most of the money and work required for carrying on the paper, although members of the party also subscribed money. The refugees ultimately took to quarrelling among themselves, and Nazarbek and his adherents succeeded in expelling from the party Sevasley and his followers. The Sevasley party then met and expelled the Nazarbek party. Each group continued to publish what claimed to be the original *Huntchak*, and cross actions were brought to restrain such publication. It does not appear from the report whether the paper was registered. North, J., held that the name of such a paper must be the property of some individual or firm or company, and not of a party. The question was, whose money had paid for the publication? In this case he was of opinion that the plaintiff, who had spent a great deal of time and attention and his own money on the publication, was the real proprietor. *Times*,
Dec. 5,
1896.

CONTRACTS.—The fact that a certain person is registered as owner of a newspaper, is only *primâ facie* evidence that he is the owner, and if he can shew that he is not the owner he may free himself from all the liability of ownership. This is to be remembered when we come to consider contracts made for services or materials on account of the newspaper. Such contracts, whether made by himself or by his duly authorized agents, of course bind the real owner; but if the registered owner be not the real owner, they do not bind him unless it can be shewn that the other party was induced to enter into the contract by the registered owner permitting himself to be held out as real owner (*Holcroft v. Hoggins*).

2 C. B. 488.
(1846.)

The contracts of the proprietor with the members of

the staff of a newspaper are contracts for personal service on the part of the latter, and therefore they will not be specifically enforced by the Courts (*Clark v. Price*). Nor, as a rule, will the Courts interfere by injunction to prevent an employé from transferring his services in whole or in part to another employer, even when he has expressly contracted to devote his "whole time" to the first employer. If any injury is done the remedy is dismissal or an action for damages (*Whitwood Chemical Co. v. Hardman*). But if there is an express negative term in the contract (*Stiff v. Cassell*), or if the negative intention is clearly implied although not expressed, an injunction against the second proprietor will be granted (*Star Newspaper Co. v. O'Connor*). Nor will the Courts specifically enforce a contract by which the employer agrees not to dismiss the employé except under certain conditions (*Davis v. Foreman*). An engagement for any longer period than a year, or an engagement for a year, when the service is to commence at a future date, comes within the 4th section of the Statute of Frauds, and the contract or some memorandum or note thereof must be in writing signed by the employer, or by his duly authorized agent. Such agreement or memorandum of agreement must bear a sixpenny stamp, or it will not be admitted as evidence in an action arising out of it. An exception is made in the case of the engagement of a "labourer, artificer, manufacturer, or menial servant," which is exempt from stamp duty. The overseer of a printing office has been held to be an "artificer" (*Bishop v. Letts*).

POSITION OF EDITOR.—The editor is the agent of the newspaper proprietor, and as such is entitled to bind

the proprietor by acts done within the scope of his authority. What acts will be held by the Courts to be within the scope of his authority depends upon the extent of the authority expressly delegated to him, for an editor, as editor, can scarcely be said to have any fixed legal status. This arises naturally from the fact that in practice his duties and powers vary with each individual case. In one newspaper he represents the proprietor in everything; he has full management and control of all departments. Here his authority to bind the proprietor is co-extensive with his powers. In another case his duties may be confined to the literary supervision of the paper; and here, clearly, his authority to bind the proprietor is confined to the department which he directs.

The question whether any act done by an editor is within the scope of his authority, and so binding upon the proprietor, can only be decided by a reference to the facts of each particular case. One thing which the Courts will hold in every instance to be within the scope of an editor's authority, is the insertion of matter in the newspaper; and so the proprietor is invariably held civilly—and formerly criminally also—responsible for all illegal matter inserted by the editor, whether that matter was inserted with his knowledge or not. And if an editor inserts illegal matter without the proprietor's knowledge, and in consequence the latter is imprisoned or mulcted in damages, he has no remedy over against the editor. The leading case upon this point is *Colburn v. Patmore*.

1 C. M.
& R. 73.
(1834.)

Colburn was proprietor, and the defendant editor, of the *Court Journal*. Without the knowledge or authority of the plaintiff, the defendant inserted a libel in the *Court Journal*, in consequence of which the plaintiff was convicted of libel and

fined £100. Colburn thereupon brought an action against the defendant, which resulted in a verdict, with £193 damages. After verdict, however, judgment was arrested on the ground that it did not appear that the damages which the plaintiff had suffered were connected with the defendant's act, the plaintiff having been fined for "printing and publishing" the libel, while the act alleged against the defendant was inserting it in the *Court Journal* and publishing it. Though the decision turned on this point, the judges took occasion to declare that had it not been raised, still the plaintiff could not have recovered from the defendant. Lord Lyndhurst, C.B., said: "I know of no case in which a person who has committed an act, declared by the law to be criminal, has been permitted to recover compensation against a person who has acted jointly with him in the commission of the crime."

DUTIES OF EDITOR.—The editor must devote to his employer's paper all the time that is reasonably necessary for the performance of his duties, and if the terms of his contract are that he is to devote his "whole time" to the paper, or that he shall accept no other employment, a breach of these conditions would justify dismissal. In the unreported case of *Devenish v. Waters* (*Times*, Feb. 27, 1892), the plaintiff, an editor dismissed without notice, was declared to have forfeited his right to sue for breach of contract by reason of his having entered into a contract inconsistent with his duties as editor of the defendant's paper. And in *Patmore v. Colburn*, where the same litigants were involved as in the case cited above, an agreement by an editor to "devote all his time and attention" (with a certain specified exception) to the editing of the paper was held necessarily inconsistent with and destructive of a previous agreement to contribute certain articles to the same paper.

⁴ Tyr. 840.
(1834.)

Patmore signed an agreement with Colburn to contribute for a fixed salary a certain amount of matter to the *Court Journal*

for one year certain. Soon afterwards, and while this agreement was still in force, he signed another agreement, making no mention of the first, in which he undertook, for a larger salary, to edit the paper, devoting to that work "all his time and attention" except such as was necessary to the getting out of a small weekly journal on which he was also engaged. In the second agreement Patmore bound himself, besides editing the paper, to contribute on the average an original article weekly, and also to do all the "reviews and articles of fashion, music, literature, the drama, fine arts, and a digest of political events." The parties got into litigation on more than one issue, and Patmore claimed salary under both agreements. The Court held that the first was determined by the second, which was necessarily inconsistent with it.

The editor being, in law, simply the agent of the proprietor, it follows that he can have no power, as against the proprietor. The decision as to what shall or shall not appear in the news and editorial parts of the paper is in almost every case impliedly or by express agreement in the editor's hands, and any unreasonable interference with the editor's position in this respect might, under certain circumstances, constitute such a breach of contract as would justify an action for damages. But, as we have seen (p. 48), the Courts will not directly or indirectly enforce specific performance of such a contract, either against the proprietor or against the editor.

In *Crookes v. Petter*, already referred to, the plaintiff and defendant had agreed that the defendant should start a newspaper, of which the plaintiff should be editor for a certain number of years, his salary to be determined by the number of copies sold. After some time disputes arose between the plaintiff and defendant, in consequence of which the defendant removed from the front page of the paper the words "Edited by W. Crookes, F.C.S.," and also practically withdrew the control of the newspaper from the plaintiff's hands. The plaintiff thereupon applied to the Court for an injunction to

3 L. T.
N. S. 225.
(1860.)

restrain the defendant from interfering with him in the editorial conduct of the paper. The application was refused, and the plaintiff left to his remedy in damages for breach of contract.

Nor can an editor, no matter how absolute his authority as editor, and although he is also part proprietor of the paper, claim to dispose of or discontinue it at his will. This appears from the *Household Words* case.

27 Beav.
53.
(1859.)

In *Bradbury v. Dickens* Mr. Dickens had entered into an agreement with Messrs. Bradbury & Evans, and also with Mr. John Forster and Mr. W. H. Wills, to establish a weekly journal called *Household Words*. The publication was to be a joint property, none of the partners to sell or alienate his share without giving his co-proprietors the option of acquiring it. Mr. Dickens was to be editor, "with absolute control over the literary department, and over all agreements, rates of payment, and orders for payment" in respect of that department; and at the head of every number appeared "*Household Words. Conducted by Mr. Charles Dickens.*" After nineteen volumes had appeared Mr. Dickens withdrew from the paper with all his staff, and announced a new publication, "*All the Year Round. Conducted by Mr. Charles Dickens.*" In the advertisement he referred to *Household Words* as "a publication that is about to be discontinued." The publishers applied to the Court to restrain Mr. Dickens. For the defendant it was argued that the real title was "*Household Words, conducted by Mr. Charles Dickens,*" and that with the retirement of the editor it must necessarily be discontinued. Romilly, M.R., held that *Household Words* was the title, and that the advertisement was an improper one, as the paper formed part of the partnership assets, and must be sold for the benefit of all the partners.

EDITOR AND CONTRIBUTORS.—Contracts made by the editor are entered into, not for his own benefit, but for that of the paper, and letters and manuscripts and all other matters that come into his hands as agent of the proprietor, are the property of the proprietor. If the editor

after ceasing to be editor attempts to use them for his own advantage the Court will grant an injunction to restrain him, and will also compel him to hand them over to his former employer. This is the general principle laid down by Chitty, J., in the leading case of *Lamb v. Evans*, and the particular instance was dealt with in another case early in the century. (1892.)
3 Ch. 468.

In *Hogg v. Kirby*, the defendant had been editor of a periodical of which the plaintiff was the owner. During the period of his editorship he received various letters from correspondents, some of which he had not published at the termination of his engagement with the plaintiff. He afterwards himself started a new paper, and began publishing in it these letters which he had received as editor of the plaintiff's paper. The Court granted an injunction to restrain him from doing so, and ordered him to deliver up all such letters to the plaintiff. 8 Vesey,
215.
(1803.)

It may be observed that where a person not on the staff of a newspaper sends a manuscript to the editor without any invitation from the editor either to himself personally or to the public generally to do so, he sends it at his own risk. There is no obligation on the part of the newspaper proprietor or editor to preserve it, and if it be lost the sender cannot recover its value. But the setting up of an article in type, and sending a proof to the author for correction, would doubtless be considered such an act of ownership or appropriation on the part of the editor as would render the newspaper proprietor liable for its value, whether used or not, unless perhaps, as is now usual, the proof is accompanied by a slip giving express notice to the writer that the setting up and the sending of the proof are not to be regarded as an acceptance. And if an editor expressly invites the public to send contributions to the paper or to some

department of it, he is required to take reasonable care of such articles as are deposited with him in response to his invitation. The same responsibility attaches to articles ordered to be written and sent in on approval; but if an article be ordered without any such qualification, and if the article as delivered be of the quality agreed upon, the writer may claim payment for it, whether used or not. In such cases the quality of the manuscript supplied as well as the precise nature of the contract are matters of evidence, and the decision will depend on the facts as proved in each instance. Failure to supply manuscript as agreed upon is cause of action (*Gale v. Leekie*). If a series of articles are ordered to be paid for in a lump sum, and the periodical ceases to appear before the series is complete, the writer is not bound to complete delivery, but may sue for work done, on a *quantum meruit* (*Planché v. Colburn*). The contracts of the proprietor of a paper with his contributors being, as we have already seen (p. 52), contracts for personal service, it follows that the benefit of them cannot be assigned to a third party without the consent of the other party concerned (*Stevens v. Benning*). In case of the bankruptcy of the proprietor the receiver cannot control such contracts, and the same principle applies in the case of the winding up of a company (*Griffith v. Tower Publishing Company*).

2 Starkie,
108.
(1817.)

5 C. & P.
58.
(1832.)

1 K. & J.
168.
(1855.)

(1897.)
1 Ch. 21.

RIGHTS OF CONTRIBUTOR.—The power of the editor to alter or otherwise deal with the contributions accepted by him depends on the nature of the understanding between the parties. In some cases literary matter is sold or disposed of absolutely, and the editor is entitled to use it in whole or in part, to alter it, to combine

it with other matter, and so forth, at his judgment and discretion; in some cases it may not be altered, or the alterations, if any, must be of a very slight character; in some cases only a limited right of publication is given, the writer retaining the copyright, or it is an understanding that the time and mode of publication must be such as not to injure the writer's profit from the same matter in other quarters (*Woods v. Johnstone*, see p. 62).

ANONYMOUS CONTRIBUTIONS.—In the case of anonymous contributions the editor's right to alter may be regarded as practically unlimited. The author suffers no wrong by such alteration. He is not represented as holding opinions which are not his, nor is his reputation for literary skill in any way compromised, however inept or ill-advised the alterations may be. The custom of the trade would be considered by the Courts as binding on all parties in such a case, and by it the editor is allowed a very free hand. The writer's contribution is a contribution to the paper, with the tone and tendency of which he may be assumed to be familiar, and it is accepted on that implied understanding.

The case of *Cox v. Cox* bears upon this point. Here the plaintiff was a barrister, who was engaged by the defendant, who was a house agent, to revise a work which the latter was publishing for the benefit of intending tenants, and also to add a short notice on the legal points involved. The plaintiff wrote a sort of treatise on the law of Landlord and Tenant, and of Real Property, which the defendant objected to on the ground of size. The plaintiff declined to alter it, and insisted that it should be printed entire or not at all. The defendant then himself abridged the plaintiff's work, and printed the book. The plaintiff applied for an injunction to restrain publication of the work with any material alteration, and also until defendant had paid plaintiff. The injunction

¹¹ Hare,
^{118.}
(1853.)

was refused. Wood, V.-C., in delivering judgment, said: "A serious question was then adverted to—but it is one which does not arise in this case—how far a party who had purchased a manuscript has a right to alter it, and produce it in a mutilated form?—how far, in a case in which the property has completely passed, it is to be assimilated to a case of goods sold and delivered, and henceforward in the complete dominion of the purchaser? A qualified contract may be made; an essay may be supplied to a magazine or an encyclopædia, on the understanding that it is to be published entire; and it may be accepted by the editor, and paid for as what it purports to be. In the instance of an essay which has been accepted in that shape, the question might arise whether any curtailment could be allowed under that special contract. But here there is no such special contract. The contract is, that the plaintiff shall supply the defendant with the matter which is required in such a form as to enable the defendant to publish it as his own."

SIGNED CONTRIBUTIONS.—The case of signed contributions is obviously different. Here the nature of the opinions advanced and the literary form of the article go to the credit or discredit of the acknowledged writer, and any alterations that are made may affect his character for honesty and consistency or, in an extreme case, his literary reputation. There is, however, very little judicial authority on the subject to guide us. No doubt the editor is entitled to omit illegal matter. The publication of this would be an offence, and no person can be required to break the law even by express agreement, still less by an implied understanding. His right to delete matter not absolutely illegal, but which he may for various reasons regard as objectionable or offensive, would also appear to be pretty extensive. The alteration of a signed letter or article is, however, always a very delicate matter, and in cases of doubt or difficulty the safest course lies in total omission. The deletion of

matter or, still more, the insertion of new matter may have the effect of distorting a writer's opinions or argument or of making him ridiculous. In such a case he could obtain an injunction to restrain further publication, and probably also he could have his remedy in an action for libel.

A case somewhat similar to that of a writer's contributions being changed so as to make him appear ridiculous or injure his reputation occurred in *Archbold v. Sweet*. There the plaintiff was a law author who had written a book on the Law of Pleading and Evidence in Criminal Cases, the copyright of which had been acquired by the defendant who brought out a new edition edited by another person, but not stated to be so edited. In this edition occurred several serious errors, such as were likely to compromise the plaintiff's reputation as an author. *Held*, that the injury to his reputation so caused afforded a good ground of action. 5 C. & P.
219.
(1832.)

The case of *Gilbert v. Boosey* also bears upon this point. Here the application was for an injunction to restrain the defendants from advertising the plaintiff's name in connection with the representation of an opera called "Les Brigands." The application was based on the fact that the defendants had inserted into Mr. Gilbert's version of the libretto two songs which were not written by him, and had omitted a solo by him. Denman, J., in delivering judgment, said: "He considered that what had been done did not justify the granting of an interlocutory injunction unless it had been done in bad faith, or the acts had been of such a kind as to injure the reputation of the plaintiff. If the songs had been scandalous or indecent, there would have been a strong ground for the Court interfering. There was nothing of the kind here, only advertisements attributing to Mr. Gilbert what was not his work, but only to a very small extent. . . . He considered it too strong a measure to hamper this performance by an interlocutory injunction when no substantial injury had been done, and no substantial injury was likely to be done to Mr. Gilbert. There would be no order on the motion, except that the costs be costs in the action." On appeal this decision was substantially affirmed. *Times*, 21st
Sept., 1889.
Law Times,
28th Sept.,
1889.

LIMITED USE OF CONTRIBUTIONS.—News agencies and correspondents who supply identical matter to a large number of newspapers are entitled to prevent any single newspaper from making a more extended use of such matter than their contract entitles them to. This follows from the Exchange Telegraph Company's cases, which will be found fully discussed (p. 86) under the heading of Copyright. If a correspondent supplies letters or telegrams to a number of morning newspapers, the proprietor of one of them, who happens also to be proprietor of an evening paper, may not prematurely publish such letters in his evening paper so as to destroy the correspondent's market with the morning papers. Again, in certain districts in the country, the post of correspondent to the great London news agencies is one of considerable value. The proprietors or editors of newspapers in such centres sometimes claim to exercise the right of using the contributions of their local correspondents for the purpose of acquiring news to wire to London for their own profit. Unless such contributions are made to the local editor or proprietor on a definite understanding that he may retail them to the London agencies in competition with their original authors, it is clear that this "milking" of messages, as it is called, constitutes such an illegal appropriation of the industry of others as the Courts would prevent.

1 F. & F.
455.
(1858.)

In *Woods v. Johnstone* the plaintiff went out as correspondent of the *Morning Herald* and other London newspapers on an Atlantic cable-laying expedition. The defendant, the proprietor of the *Morning Herald*, was also proprietor of the *Evening Herald* and of the *Standard*, then an evening newspaper. When Mr. Woods's letters arrived they were first published in Mr. Johnstone's evening papers, whereupon the other morning papers refused to publish or pay for Mr. Woods's

contributions, on the ground that their novelty and interest had been destroyed by the appearance of their substance in the evening papers. The plaintiff proved that his agreement with Mr. Johnstone was for the right to publish the letters in the morning paper exclusively, and Erle, J., directed the jury that the defendant's action constituted a breach of contract, the measure of damages being the amount which the plaintiff would have received from the other newspapers which had agreed to accept his letters.

TERMINATION OF CONTRACT.—In the absence of an express agreement providing for the manner of terminating the contract, reasonable notice must be given of the intention of either party to a contract for employment on a newspaper to terminate that contract. The determination of the employment without the notice agreed upon, or without sufficient notice, constitutes a breach of contract entitling the injured party to sue for damages. Serious misconduct on the part of the employé is, of course, in all cases, held to justify immediate dismissal. Refusal to obey lawful orders, unwarrantable absence from duty or neglect of duty, dishonest financial criticism on the part of a financial editor, misconduct injurious to the character and standing of the paper, or the disclosure of valuable information to a rival paper—any of these would be held sufficient to justify the immediate dismissal of an employé. We have also seen (p. 54) that an editor, by entering on a contract inconsistent with his duties to a proprietor, may deprive himself of his remedy in case of dismissal; and, on the other hand, unreasonable interference on the part of the proprietor, such as constitutes a practical withdrawal of the editorial authority from his hands, or the requiring him to perform duties inconsistent with his position and injurious to his professional standing, would undoubtedly,

3 L. T.
N. S. 225.
(1860.)

in extreme cases, be interpreted as such a breach of contract as would justify the editor in retiring from his position and claiming damages for breach of contract. As the Courts will not issue an injunction restraining the proprietor from interference with the editor (*Crookes v. Petter*), the action for damages is his only remedy, and the same principle would no doubt apply in the case of other members of the staff in their respective degrees. As a rule, the measure of damages which the employé can recover from his employer is limited by the amount of wages or salary which by agreement or custom he would have been entitled to receive if the contract had been fulfilled; but it is submitted that in a case of unreasonable interference with an editor's duties necessitating his summary retirement, the circumstances might be of such a character that the injury to his professional reputation might be brought in as an additional element in the calculation of damages.

Similarly, when the employé leaves without notice, the measure of damages is the amount of injury suffered by the proprietor through the employé's breach of contract. If an editor, without warning, threw up his post, and if in consequence of that or of other gross misconduct the newspaper failed to appear at the proper time, he might find himself liable in damages far beyond the amount of any sum he could have recovered from the proprietor, had the proprietor dismissed him without notice.

WRONGFUL DISMISSAL.—The length of notice to which, in the absence of agreement, the various members of the staff of a newspaper are entitled has been a matter of considerable dispute and controversy, and is still

unsettled. At one time the Courts seem to have been satisfied (*Baxter v. Nurse*) that the implied contract in such cases was of the nature of a yearly hiring, and that “in the case of editors, sub-editors, and reporters, and other persons regularly employed on newspapers, it is always understood and acted upon by all parties, and the general usage is for the engagement to be for a whole year.” A similar engagement was implied from year to year while the employment lasted, and it was a condition of it that it could only be determined by reasonable notice ending with the current year. There are cases in the books which support this view of newspaper contracts, but all recent attempts to establish it in the Courts have failed (*Lowe v. Walter*; *Fox-Bourne v. Vernon*). The alleged custom seems to be contrary to modern newspaper practice in two particulars. Nowhere is it the custom for “editors, sub-editors, reporters, and other persons regularly employed” to hold their positions on the same tenure, and nowhere has a custom been proved of engagements terminating at the end of the year of service. Nor can it be held reasonable that the editor of a great daily newspaper, which requires all his time and energy, should be placed on the same footing as the editor of a small weekly paper, with altogether different duties and responsibilities. The alleged custom, therefore, breaks down as not being universal, and not being reasonable, and the question reduces itself to one of what is reasonable notice in the circumstances of each particular case. The evidence on the point is conflicting—editors and assistant editors being held entitled to from six months to twelve months, according to the importance of the paper; sub-editors from three to six months; and reporters from one to

1 C. & K.
10.
(1843.)

8 T. L. R.
358.
(1892.)

10 T. L. R.
47.
(1894.)

three months. There is a well-known special custom in the case of Parliamentary reporters to the effect that all engagements, unless the contrary is expressed, are for the Parliamentary session. The question is in all cases one of fact, and the custom or practice alleged must be proved, in each case, to the satisfaction of the jury. The fact that the salary is paid weekly or monthly, as is usual with most newspapers, is not to be taken as constituting the employé a weekly or monthly servant (*Williams v. Byrne*). The latest case in which the whole subject was fully discussed is *Fox-Bourne v. Vernon*.

7 A. & E.
177.
(1837.)

10 T. L. R.
647.
(1894.)

In *Fox-Bourne v. Vernon* the plaintiff, who was editor of the *Weekly Dispatch*, was dismissed with six months' notice. He claimed twelve. Very conflicting evidence as to the custom governing such a case was given. In directing the jury, Lord Russell, L.C.J., said that the only question was whether plaintiff was entitled to twelve months' notice, or whether six months' notice was such a notice as the defendants were legally entitled to give him. The jury had no question of "custom" to consider, for "custom" in its strict legal sense, was a uniform and universal practice so well defined and recognized that contracting parties must be assumed to have had it in their minds when they contracted. But, on plaintiff's behalf, it was sought to establish the existence of a "practice" regulating the relations between editors and proprietors. What that practice was would be some guide to the jury in coming to a conclusion as to what was or was not a reasonable notice in this case. The question he would put to the jury was—"Had the plaintiff reasonable notice to determine his employment, having regard to the circumstances of the case, and to the usual custom, if they thought that any existed?"

DEATH OR BANKRUPTCY OF EMPLOYER.—The death of the employer puts an end to the contract of service (*Farrow v. Wilson*); but a voluntary parting with the business on his part is a breach of the contract to

L. R. 4
C. P. 744
(1869.)

employ (*Stirling v. Maitland*). It must be remembered, ^{34 L. J. Q. B. 1. (1865.)} however, that although the contract, being a personal one, cannot be assigned without the consent of the employé, there can be no claim for damages if he has had from the new proprietor an offer, under fair conditions, of a continuance of his employment. A dissolution of partnership (*Hobson v. Cowley*), the bank- ^{27 L. J. Ex. 205. (1858.)} ruptcy of the employer, or the winding-up of the employing company also leaves the employés in possession of their just rights as against the partnership property, or the property or assets in the possession or under the control of the receiver. In case the bankruptcy or winding-up means the absolute stoppage of the employment, the employé is entitled "to prove for the damage which could be recovered for the breach of the contract" (*Mellish, L.J., in Ex parte Llynvi Coal Co.*). In such ^{L. R. 7 Ch. 34. (1871.)} cases the winding-up is a notice of discharge from the date of the order; but if the business is that of a continuing company, and if the employés are offered continuance of their employment, the old contracts continue in force, and are subject to notice on either side as before (*In re English Joint Stock Bank; Ex parte Harding*). ^{L. R. 3 Eq. 341. (1867.)} Where there is a contract for a term of years coupled with other advantages, such as house accommodation, the proper course is to ascertain the present value of an annuity for the unexpired term of years, and the proper rent of the house for the same period, with some deductions for the chances of obtaining fresh employment (*In re English Joint Stock Bank; Yelland's Case*). ^{L. R. 4 Eq. 350. (1867.)} These claims rank with the rest of the debts of the proprietor, but special provision is made for the smaller employés (among other creditors) by the Preferential ^{51 & 52 Vict. c. 62. 60 & 61 Vict. c. 16.} Payments in Bankruptcy Acts, 1888 and 1897. By

the original Act it is provided that, in the distribution of the property of a bankrupt, or of the assets of a company that is being wound up under the Companies Acts, the wages or salary of any clerk or servant in respect of any services rendered during the four months preceding the date of the receiving order, or of the beginning of the winding-up, and not exceeding £50, shall be paid in full, and in priority to all other debts not specified in the Act, if the assets are sufficient. And by the Amending Act of 1897, it is provided that such claims shall have priority even over those of the debenture holders, and in case a receiver is appointed on behalf of the holders of debentures or debenture stock, the claims in question "shall be paid forthwith out of any assets coming to the hands of the receiver." Note that the words "clerk or servant," while they undoubtedly comprehend all those employed on a paper on regular salaries, do not apply to contributors who are paid by "space."

¹ Q. B. D.
^{145.}
(1875.) A curious case of double bankruptcy arose in *Wadling v. Oliphant, Morris (claimant), Evans (garnishee)*. Oliphant became bankrupt, and Morris was appointed trustee in bankruptcy. Before receiving his discharge Oliphant became editor of a weekly newspaper whose proprietors shortly became bankrupt too, Evans being appointed trustee of that bankruptcy. Evans carried the paper on with Oliphant as editor, but eventually he sold the paper. Oliphant claimed compensation, and was awarded by the Court six months' salary in lieu of notice. Wadling, who had a judgment out against Oliphant on a bill of exchange, took out a garnishee summons, and secured an order attaching the debt. Morris also claimed as trustee of the original bankruptcy. The Court (Blackburn, Quain, and Archibald, JJ.) held that the money in dispute was not money earned by personal labour, but was money awarded by the Lords Justices in respect of a breach of contract to pay

Olipant for his services as editor of a newspaper. Not being personal earnings, but damages for breach of contract, it passed to the trustee of the original bankruptcy.

ADVERTISEMENT CANVASSERS' BOOKS, ETC.—When an advertisement canvasser terminates his employment with a newspaper, disputes often arise as to the possession of various books, lists, and memoranda containing names of advertisers and other particulars drawn up by him in the course of his employment. A canvasser cannot, of course, in the absence of express negative contract, be prevented from carrying with him to a new employer all the experience, skill and, possibly, knowledge which he has acquired; but as to all such note-books, lists, or other materials, they are the exclusive property of the employer in whose service they were compiled, and the canvasser will be restrained from retaining such materials, or from making use of them in his new employment.

In *Lamb v. Evans*, already more than once referred to, the defendants were employed to canvass for advertisements and other information for a Directory. On their attempting to transfer materials so collected to another Directory the Court issued an injunction, as regards one part of the case, on the ground of copyright in the heading and classification of the advertisements (see "Advertisements," p. 37), but also on the ground that such a transfer was a breach of the defendant's duty as an agent. In deciding this point in the Court of Appeal, Lindley, L.J., laid it down that "an agent has no right to employ, as against his principal, materials which that agent has obtained only for his principal, and in the course of his agency. They are the property of the principal, and the principal has, in my judgment, such an interest in them as entitles him to restrain the agent from the use of them, except for the purpose for which they were got." And Kay, L.J., after describing the duties of such an agent, said, "I take for granted that they would have a note-book in which they would

(1892.)

³ Ch. 462.

(1893.)

¹ Ch. 218.

note down all the information from the people whom they canvassed. . . . Why should they not retain these note-books in their hands, having now left the plaintiff's employ, and use them in order to find out the persons abroad with whom they had formerly entered into engagements, and to obtain from those advertisers authority to put advertisements of theirs into a rival publication to be published as a rival of the plaintiff's book? The answer is a very simple one: All those materials were obtained while you, the defendants, were acting as the plaintiff's agents, while you were in that confidential relation to him, and for the purpose for which he employed and paid you." After citing the judgment of Turner, L.J., in *Prince Albert v. Strange*, his lordship went on to say that the doctrine extended to "every case in which a man has obtained materials—I use the word advisedly, because it would be very difficult, indeed, to grant an injunction to prevent a man using his knowledge—where a man has obtained materials while he was in the position of agent for another, materials which were obtained by him in the course of that agency, and were to be used for the purposes for which his principal had employed him."

1 Mac. &
G. 25.
(1849.)

LIABILITIES OF PROPRIETORS.—There are certain rather serious liabilities to which proprietors of newspapers are subject chiefly by reason of recent enactments connected with Illegal Practices at Elections, Membership of Public Bodies, and the publication of Official Secrets.

ILLEGAL PRACTICES AT ELECTIONS.—A new offence, which may affect the proprietors of newspapers taking an active part in election contests, has been created by the Corrupt and Illegal Practices Prevention Act, 1883. Sect. 9, sub-sect. 2, which creates the offence, runs as follows:—

46 & 47
Vict. c. 51.

Any person who, before or during an election, knowingly publishes a false statement of the withdrawal of a candidate at such an election for the purpose of promoting or procuring

the election of another candidate shall be guilty of an illegal practice. .

This enactment, which refers to parliamentary elections, was extended by sect. 6, sub-sect. 2 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, to elections coming within that Act, that is, besides municipal elections, to elections of members of Local Boards, Improvement Commissioners, Poor Law Guardians, and School Boards. By sect. 75 of the Local Government Act, 1888, it is further extended to elections of members of County Councils, and by sect. 48, sub-sect. (3) of the Local Government Act, 1894, to elections of members of Parish and District Councils, London Vestries, and Boards of Guardians.

The penalty for a breach of this provision is laid down in sect. 10 of the Corrupt and Illegal Practices Prevention Act, which runs as follows :—

A person guilty of an illegal practice . . . shall, on summary conviction, be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act), held for or within the county or borough in which the illegal practice has been committed.

Sect. 7 of the Municipal Elections (Corrupt and Illegal Practices) Act is to the same effect.

By sect. 64 of the Corrupt and Illegal Practices Prevention Act, the expression “public office” in sect. 10 is defined, and includes every office, whether under the Crown, or local, educational, municipal, or parochial.

Newspaper proprietors who are also general printers should not overlook sect. 18 of the same Act, and sect.

Sect. 18. 14 of the Municipal Elections (Corrupt and Illegal Practices) Act, under which the printing, publishing, or posting of “any bill, placard, or poster having reference to an election” which fails to bear upon the face thereof the name and address of the printer and publisher may involve a penalty of one hundred pounds.

RELIEF.—Relief from these penalties is afforded, under certain circumstances, by sect. 20 of the Corrupt and Illegal Practices Prevention Act, which runs as follows :—

Where, on application made, it is shewn to the High Court or to an Election Court by such evidence as seems to the Court sufficient—

(a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being a payment, engagement, employment, or contract in contravention of this Act, or being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Act, or of otherwise being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment or hiring; and

(b) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from want of good faith; and

(c) that such notice of the application has been given in the county or borough for which the election was held as the Court seems fit;

and under the circumstances it seems to the Court to be just that the candidate and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Sect. 20 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, is to the same effect. It is to be noted that, although proceedings may generally be taken against the candidate, all parties constituting themselves his agents are equally liable.

Under this section in *Ex parte Clarke and Others*, four ^{52 L. T.} candidates, who had issued posters at a Municipal Election ^{260.} without the name and address of the printer and publisher, (1885.) were excused from the consequences of this action, on the ground of inadvertence. But Grove, J., declared "it must not be taken as a precedent, because there is a mistake or inadvertence in this case, such shall always be so treated in the future. I should be inclined to take a stricter view of these inadvertences when the Act shall become better known."

Another illegal practice which may affect newspaper ^{58 & 59} proprietors was created by an Act, passed in 1895, to ^{Vict. c. 40.} amend the Corrupt and Illegal Practices Prevention Act, 1883.

Sect. 1. Any person who, or the directors of any body or association corporate which, before or during any parliamentary election, shall, for the purpose of affecting the return of any candidate at such election, make or publish any false statement of fact in relation to the personal character or conduct of such candidate shall be guilty of an illegal practice within the meaning of the provisions of the Corrupt and Illegal Practices Prevention Act, 1883, and shall be subject to all the penalties for and consequences of committing an illegal practice in the said Act mentioned, and the said Act shall be taken to be amended as if the illegal practice defined by this Act had been contained therein.

Sect. 3. Any person who shall make or publish any false statement of fact as aforesaid may be restrained by interim or perpetual injunction by the High Court of Justice from any repetition of such false statement or any false statement of a similar character in relation to such candidate, and for the

purpose of granting an interim injunction *prima facie* proof of the falsity of the statement shall be sufficient.

An exception is, however, created by sect. 2:—

• No person shall be deemed to be guilty of such illegal practice if he can shew that he had reasonable grounds for believing, and did believe, the statement made by him to be true.

Sanders &
Keep's
Election
Petition
Reports,
vol. v. pt. i.
p. 53.

The Borough of Sunderland Case is the only petition which has been brought under this Act. Respondent through his agent issued a circular charging the petitioner with having "paid wretched wages" and with "Radical shuffle." In his judgment, Pollock, B., declined to give any definition of what constituted "a false statement of fact," but said that all the circumstances in each particular case must be considered. The circular was a reprint of a leading article in a local newspaper, and was issued with the editor's consent and connivance, and was, in fact, published in the office of the newspaper. The Court held, on the evidence, that both the agent and the editor—who must in this matter be considered an agent of the respondent—had reasonable grounds for believing, and did believe the statements made in the circular, and the petition was accordingly dismissed.

NEWSPAPER PROPRIETORS ON PUBLIC BODIES.—There are several statutes which affect the position of those having a share or interest in newspapers when acting as members of various public bodies.

33 & 34
Vict. c. 75.

(1) SCHOOL BOARDS.—By sect. 34 of the Elementary Education Act, 1870, any one having a share or interest in a newspaper in which any advertisement relating to the affairs of a school board is inserted may be a member of such school board, but may not vote with respect to such insertion. Any person who acts in contravention of this section shall be liable, on summary conviction, to a penalty not exceeding £50, and his office as member shall be vacant.

(2) MUNICIPAL CORPORATIONS.—Sect. 12 of the ^{45 & 46} Municipal Corporations Act, 1882, provides that a person ^{Vict. c. 50.} shall be disqualified from being elected and for being a councillor if and while he has, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council, but that a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment by reason only of his having any share or interest in any newspaper in which any advertisement relating to the affairs of the borough or council is inserted. But such member cannot vote or take part in any discussion relative to the insertion of such advertisements by virtue of sect. 22, sub-sect. (3), which runs as follows:—

A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest.

If he does vote in such a case, his vote would be invalid; but the Act does not appear to contain any provision for a penalty.

(3) COUNTY COUNCILS.—By sect. 75 of the ^{51 & 52} Local Government Act, 1888, the above provisions of the ^{Vict. c. 41.} Municipal Corporations Act are applicable to members of county councils.

(4) DISTRICT AND PARISH COUNCILS, BOARDS OF GUARDIANS, AND LONDON VESTRIES.—By sect. 46 of the Local Government Act, 1894, a person shall be disqualified for being elected or being a member or chairman of any of the above public bodies if he is concerned in any bargain or contract entered into with the council, vestry,

or board, or participates in the profit of any such bargain or contract; but a person shall not be so disqualified by reason of his being interested in any newspaper in which any advertisement relating to the affairs of the council, vestry, or board is inserted. There does not appear to be anything in the Act preventing a member interested in such a newspaper from voting as to the insertion of such advertisements.

52 & 53
Vict. c. 52.

OFFICIAL SECRETS ACT.—The Official Secrets Act, 1889, prescribes penalties for the communication or the attempt to communicate official information to any person to whom such information ought not to be communicated. Sect. 3 of the Act declares further that—

Sect. 3.

any person who invites or counsels, or attempts to procure, another person to commit an offence under this Act, shall be guilty of a misdemeanour, and on conviction be liable to the same punishment as if he had committed the offence.

This undoubtedly applies to the case of the editor or manager of a newspaper employing any one to obtain information contrary to the provisions of the Act. One of those provisions, relating to the offence of conveying such information to foreign States, which is felony and involves the penalty of penal servitude for life, need not be discussed here, but the others should be kept clearly in mind by those in charge of newspapers which are anxious to obtain early information at any cost. All persons contravening the ordinary provisions of the Act, or inviting, counselling, or attempting to procure such contravention are guilty of a misdemeanour, and are liable to imprisonment for a term not exceeding one year, or to a fine, or both.

The offences in the first section are—

- (a) Entering or being in any fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to Her Majesty the Queen, or, when inside or outside such place, obtaining or taking any document, sketch, plan, model, or knowledge, for the purpose of wrongfully obtaining information; or
- (b) Knowingly being in possession of such document, sketch, plan, or knowledge obtained in contravention of the Act, and communicating or attempting to communicate the same to any person to whom it ought not in the interest of the State to be communicated at that time; or
- (c) Being entrusted in confidence with any document or information relating to any such place, or to the Military or Naval affairs of Her Majesty, and wilfully and in breach of such confidence communicating the same when, in the interest of the State, it ought not to be communicated.
- (d) Having possession, in whatever manner obtained, of such document or information, and wilfully communicating the same to any person to whom the person having possession knows it ought not in the interest of the State to be communicated at that time.

The second section of the Act relates to any person holding or having held an Office under the Queen, who by means of that Office has obtained possession or control over any document, sketch, plan, or model, or acquired any information, and who corruptly or contrary to his official duty communicates or attempts to communicate such document, sketch, plan, model, or information to

any person to whom the same ought not, in the interests of the State or otherwise in the public interest, to be communicated at that time. Such an act is declared to be a breach of official trust, and is punishable as in the previous section. This applies to any person holding a government contract where such contract involves an obligation of secrecy, and to the persons employed by such contractor.

By sect. 7 no prosecution for an offence against the Act can be instituted except by, or with the consent of, the Attorney-General.

REPORTERS AT PUBLIC MEETINGS.—The representatives of newspapers have the right, as members of the public, to attend all meetings of Town and County Councils and other bodies to which the public are admitted. There is no obligation on the authorities in charge to give facilities for reporting, but they cannot prevent any one doing so who wishes. Such bodies usually have standing orders authorizing them to exclude the public during the whole or some portion of a meeting, but this gives them no authority for the partial exclusion of the public—for the admission of some and the exclusion of others, although attempts have been made under it to exclude reporters, or some individual reporter, while admitting others of the public. All members of the public, including reporters, have the right, so long as they conduct themselves properly and obey the lawful orders of those in authority, to attend such public meetings; and forcibly to exclude or expel any reporter or reporters while admitting the rest of the public constitutes an assault. With regard to “public meetings,” commonly so called, held in a room or hall for which

some person or body has paid, the law appears to be that all persons present are there by licence of the temporary lessee of the hall, and that he may exclude or admit whom he pleases. If the representatives of the press are there by invitation, presumably the invitation may be revoked at any time, but any person paying for admission is entitled to remain so long as he behaves properly and obeys the conditions on which he obtained admission, which conditions may or may not include the right to report the proceedings.

CHAPTER IV.

COPYRIGHT.

THE importance of the Law of Copyright in its application to the periodical press has greatly increased of late. There has grown up a class of publications composed largely or entirely of extracts from other newspapers, and the right of these papers to make use of matter for which others have paid may be called in question. The publication in ordinary newspapers of articles, sketches, and tales of permanent literary value, without reference to passing events, has also raised the question of copyright as between the author and the newspaper proprietor on the one hand, and between the original purchaser and the "pirate" on the other. The practice of giving very extended extracts from a new work, in place of a review, has also threatened to involve the intervention of the law courts. For these reasons it will be necessary to discuss at some length the question of Copyright as it affects newspapers.

UNPUBLISHED MATTER.—At Common Law there is a right to restrain the publication of unpublished literary matter or of matter which has been published only to a limited number of persons who are, expressly or impliedly, pledged not to further print or publish it. After

it has been published to the world at large its protection depends on the Copyright Acts.

So long as literary matter remains entirely unpublished it is the absolute property of the author or his assignee, who is entitled to do as he likes with it. The paper upon which it is written and the ideas and collocation of words it contains are alike his, and he is equally entitled to prevent any other person from appropriating the paper or publishing its contents. (*Prince Albert v. Strange*.) Nor is this right lost by a publication to a particular person or number of persons: it is only modified (per Lord Brougham, *Jefferys v. Boosey*). The extent to which the author has in such a case parted with his right to restrain publication is determined by the object of the special publication as expressly stated or as indicated by the circumstances surrounding it (*Hopkinson v. Burghley*). A dramatist who reads his play to a theatrical manager, or whose play is under rehearsal, is entitled to restrain a newspaper from publishing without his consent a sketch of its plot (*Gilbert v. The Star*). A teacher who reads a lecture to his class does not thereby give his hearers a right to print and publish it (per Lord Watson, *Caird v. Sime*). Each hearer has, however, a right to take notes, or, for that matter, a complete report of the lecture for his own edification. This right to prevent publication does not depend upon the author retaining the manuscript; the writer of a private letter is entitled to prevent the receiver from publishing it, unless the publication is necessary for the protection of the receiver's legal rights or character (*Perceval v. Phipps*; *Labouchere v. Hess*); and in case the writer be dead, the right to restrain publication devolves upon his executors or administrators (*Earl of Lytton v. Devey*).

² De G. &
Sm. 652.
(1849.)

⁴ H. L. C.
⁸¹⁵.
(1854.)

L. R. 2 Ch.
⁴⁴⁷.
(1867.)

(1894.)
¹¹ T. L. R.
⁴.

¹² App.
Cas. 326.
(1887.)

² V. & B.
¹⁹.
(1813.)

(1897.)

⁷⁷ L. T.
⁵⁵⁹.

⁵² L. T.
¹²¹.

(1884.)

As has been said in cases of limited publication, the right of printing and publishing depends upon the object of the limited publication. Accordingly when a person sends to the editor of a newspaper a letter intended for publication, the editor is entitled to publish it in his capacity as editor of that particular paper. But if, after he has received the letter, and before it is published, he transfers his services to another paper, he is not permitted to transfer to and publish in the second paper the letter which he received as editor of the first (*Hogg v. Kirby*).

8 Vesey,
215.
(1803.)

17 S. S. C.,
2nd S.,
1166.
(1855.)

(1895.)
1 Ch. 567.

If, however, the writer withdraws his consent to publication before the letter has actually appeared, it seems that the editor is not entitled to publish it (*Davis v. Miller and Fairley*), unless perhaps the writer received valuable consideration for consenting to its publication (per North, J., *Labouchere v. Hess*, supra, at p. 562, and see *Cooper v. Stephens*).

LECTURES.—A point on which difficulties frequently arise is with regard to the publication of reports of lectures and sermons. As to lectures the Common Law is reinforced by a special Act of Parliament.

5 & 6
Wm. 4,
c. 65.
(1835.)
Sect. 2.

Sect. 3.

Sect. 4.

This statute enacts that the printer or publisher of any newspaper who shall, without the consent of the author or his assignee, print or publish any lectures shall be liable to the forfeiture mentioned in the statute, that is to lose all copies of the lectures printed by him, together with one penny for every copy found in his custody. By sect. 3 the fact that a person has paid for admission to hear the lecture is not to be regarded as conferring a licence to print and publish it, and by sect. 4 the Act does not apply to lectures published by their authors or assignees, and of which the statutory

term of copyright has expired. By the last section, *Sect. 6.* however, this curious Act is rendered practically nugatory, as its application is limited to lectures of the delivery of which two days' previous notice has been given in writing to two justices living within five miles of the place where such lecture is to be delivered. And the Act is in no case to extend "to lectures delivered in any university or public school, or college, or in any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation." With regard to all these the law is left as it was before the Act was passed.

That law is simply what has been stated already with regard to works not published. When a lecture is delivered, the question to be decided is, what was the lecturer's object? If he meant to publish his lecture merely to the audience before him, then there is only a limited publication, and the hearers have no right to print and publish it to the world. If, on the other hand, the object of the speaker was to publish his views to the whole world, then the publication is not a limited one, and any one who chooses may print and publish the lecture. And in deciding the lecturer's object, the Courts will not inquire into his private intention. As the rule is based on an implied understanding between lecturer and audience, they will look merely to the circumstances from which the audience might gather the lecturer's intention. If these indicate that it was his wish merely to publish his lecture to those present at the time of delivery, the audience will be held to have attended on the implied understanding that his wish should be respected. If the circumstances indicate no such wish, no such understanding will be implied. The circumstance

most commonly held to indicate an intention to publish to the audience only, is, that admission was limited by payment or by favour. When admission is not restricted in any way, the Courts would probably consider that a general publication was intended, and that therefore any one who chose might print and publish the lecture. The same rule applies to sermons. It is probable that the clergyman retains no copyright in a sermon preached in open church. This at any rate would seem to be the case with sermons delivered in a parish church at services to which every parishioner is entitled to admission.

26 Ch. D.
374.
(1884.)

There are two important cases with regard to lectures. The first is *Nicols v. Pitman*. Here the plaintiff delivered a lecture at the Working Men's College, Bloomsbury. Admission was by ticket issued gratuitously by the Council of the College. The defendant was a shorthand writer and the owner of a newspaper called the *Phonographic Lecturer*. He attended the lecture and took what was practically a full report, which he afterwards printed in shorthand and published in his newspaper. The plaintiff, on discovering this, began an action for an injunction and damages. *Held*, that he was entitled to both. Kay, J., in delivering judgment, said: "Where a lecture of this kind is delivered to an audience, especially where the audience is a limited one admitted by ticket, the understanding between the lecturer and the audience is that whether the lecture has been committed to writing beforehand or not, the audience are quite at liberty to take the fullest notes they like for their own personal purposes; but they are not at liberty, having taken those notes, to use them afterwards for the purpose of publishing the lecture for profit."

12 App.
Cas. 326.
(1887.)

The other case is that of *Caird v. Sime* already referred to. It was a Scotch case which came before the House of Lords on appeal. The plaintiff was a professor in the University of Glasgow, and his complaint was that the defendant had published, without his consent, the lectures delivered by him to his class. It was shewn that no one was entitled to attend these

lectures unless he was a matriculated student of the University, and had paid the class fees. *Held*, by the Lord Chancellor and Lord Watson—Lord Fitzgerald dissenting—that under the circumstances it was clear that only a limited publication to the class was intended, and that consequently the lecturer's copyright in his lecture remained. See also *Abernethy* v. 3 L. J. Ch. *Hutchinson*, and the remarks thereon of Bowen, L.J., in *Lamb* ^{209.} (1893.)
v. *Evans*. 1 Ch.,
p. 230.

UNPUBLISHED NEWS.—The right to restrain the publication of unpublished or partially published matter applies when that matter is ordinary news. If a person obtains possession of information not generally known, that information is his own to publish or to withhold from publication. If he licenses another person to publish it in a particular way, or to a particular class of persons, that fact does not destroy his property in it: he is still entitled to restrain the publication of that information in any other way or to any other class. No doubt any other person who acquires the same information on his own account may publish it as he likes, but the law will not permit him to take advantage of the labour and expenditure by which the first person obtained the news, and arranged it for publication.

The growth of news agencies which supply stock exchange, turf, and other information by tape machines to particular subscribers has made this rule of considerable importance. With most of these it is usual to insist that subscribers shall enter into an express contract not to publish, save in the manner agreed upon, the information supplied to them by the agency; but such an express contract is not necessary where it is clear from the circumstances that both parties understood that the information was not to be so used. And the Court will not only restrain the subscribers themselves from publishing

generally the information, but will also restrain a third person from inducing a subscriber to publish or impart it.

(1897.)
2 Ch. 48.

In *Exchange Telegraph Co. v. Central News and others* the plaintiffs were a company which supplied newspapers, hotels, clubs, and other subscribers with news, subject to the following condition: "The news supplied by the company is to be used only in the newspaper, or posted only in the club, news-room, office, or other place at which it is delivered. No copy of it shall be made for any other purpose than for such publication, and it shall not be transmitted, communicated, or delivered to any other party or parties by messenger, telegraph, telephone, or otherwise, nor shall the subscriber assign the benefit of the whole or part of this agreement, nor let upon hire the instrument or the right to use it, nor in any way part with the possession of the instrument without the written consent of the company." The defendants were a competing news agency, and they procured, in some way not revealed, access to the plaintiffs' news, and supplied it to their subscribers as their own. The plaintiffs applied for an injunction restraining them from surreptitiously obtaining or copying from the documents of the plaintiffs any information collected by the plaintiffs for the purpose of transmission to their subscribers, and from communicating the information so obtained or copied to other persons. It was argued for the defendants that the information—which related to the result of a race—was public property, and could be obtained by any one on the course, or any one who entered a club or hotel where the plaintiffs' tapes were, and that such persons were entitled to communicate it to the defendants, who might publish it. The Court granted the injunction. In delivering judgment, Stirling, J., said (at p. 53): "By the expenditure of labour and money the plaintiffs had acquired this information, and it was in their hands valuable property in this sense—that persons to whom it was not known were willing to pay, and did pay, money to acquire it. The plaintiffs were at full liberty to communicate that information upon such terms as they saw fit, and accordingly they communicated it to their subscribers upon the terms already mentioned. A subscriber who communicated the

information to third parties contrary to those terms would commit a breach of contract, and might be restrained by injunction from so doing. A third party who induced a subscriber to break his contract, and in that way acquired and published information, might also be restrained by injunction from so doing: see *Exchange Telegraph Co. v. Gregory & Co.* It was said, however, in the present case . . . that the news was supplied by the plaintiffs to clubs, news-rooms, and hotels for the purpose of being posted up there, and it was said that messages received by the defendants might have come from some person who had lawfully acquired it at some such place, and was at liberty to use it as he saw fit. I think it possible that such a person might exist, but I also think that, in the evidence before me, I ought not to come to the conclusion that such a person sent these messages to the defendants.”

(1896.)
1 Q. B.
147.

PUBLISHED MATTER.—Before publication, as we have seen, the author's right over literary matter is protected by the common law. After publication, whatever may have been the law formerly, his right in respect to it now depends entirely upon statute. That right is called copyright, and may be defined for present purposes as the exclusive right to print or otherwise multiply copies of a literary composition.

5 & 6 Vict.
c. 45, s. 2.

Some authorities contend that the ancient common law assured to authors and their assigns a perpetual copyright which was not lost by the publication. Undoubtedly in the earlier half of last century the tendency of judicial opinion favoured this view. It was even decided by Lord Mansfield, C.J., in *Millar v. Taylor*, that not only did a perpetual copyright exist at common law, but that that right was not interfered with by the first Copyright Act. This decision, however, was shortly afterwards overruled in the House of Lords. In *Donaldson v. Beckett* it was held that whatever may have been the common law view, since the statute of Anne,

4 Burr.
2303.
(1769.)
8 Anne,
c. 16.
4 Burr,
2408.
(1774.)

copyright after publication depended entirely upon that statute. That Act has since been repealed by the Copyright Act of 1842; but the doctrine established in *Donaldson v. Beckett* still holds good. There is no perpetual copyright now recognized in English law save in the case of copyrights vested in the Crown, and copyrights vested in the Universities and Colleges of Oxford and Cambridge, the Universities of Dublin, Edinburgh, Glasgow, St. Andrews and Aberdeen, and the Colleges of Eton, Westminster, and Winchester (sect. 27).

REQUISITES FOR COPYRIGHT.—In order that published matter may be the subject of copyright under the Copyright Act, 1842 (5 & 6 Vict. c. 45), it must (1) be a literary work; (2) be original in its nature; (3) consist of matter the publication of which is not illegal.

LITERARY WORK.—The preamble to the Copyright Act, 1842, gives as the motive for passing the Act the expediency of encouraging the production of “literary works of lasting benefit to the world.” In applying the statute, however, the Courts have given the term “literary work” a very wide and vague meaning. Though it is impossible to define that meaning, it is clear that all leading and special articles and ordinary news items are within it (*Walter v. Steinkopff*). So are telegrams giving the current prices of stocks and shares (*Exchange Telegraph Co. v. Gregory & Co.*), and even the headings of classified advertisements where these are in any way peculiar to the paper using them (*Lamb v. Evans*). It has been held, however, that a mere selection of probable winners in a race is not a literary work entitled to copyright (*Chilton v. Progress Printing and Publishing Co.*).

(1892.)
3 Ch. 489.

(1896.)
1 Q. B. 147
at p. 157.

(1892.)
3 Ch. 462.

(1895.)
2 Ch. 29.

But see the remarks of Rigby, L.J., in *Exchange Telegraph Co. v. Gregory & Co.* (1896.)
1 Q. B. 147,
at p. 157.

ORIGINALITY.—That a literary composition may be considered original, it is not necessary that it should consist exclusively, or indeed at all, of new materials. A work may be original not merely in its substance, but also in the expression or the arrangement of its substance. A summary of the proceedings in a court of law contains no original matter, yet it is entitled to copyright (*Sweet v. Benning*). Again, there is no original matter in a mere extract from an official paper (*Leslie v. Young*), yet there may be copyright in a digest of such papers, or even in a series of extracts so arranged as to give complete information upon a given topic (*Trade Auxiliary Co. v. Middlesborough, etc., Association*). As laid down by Lindley, L.J., in this case, the true test in deciding whether work is original or not is: Has the author or compiler bestowed any brainwork upon it? If he has, whatever the result of the brainwork may be—whether a mere list of names and addresses, or a series of extracts from public documents—it is sufficiently original in its nature to entitle its author to the legal copyright in it.

It has been held that there is copyright in a list of bills of sale and deeds of arrangement (*Trade Auxiliary Co. v. Middlesborough, etc., Association*); in a directory (*Kelly v. Morris*); in mathematical tables actually calculated by the plaintiff (*Baily v. Taylor*); and in a translation (*Wyatt v. Barnard*).

In each of these cases the material was common to every one who chose to make use of it, and, with regard to the first three of them, at any rate, it is evident that two or more persons working separately might produce

16 C. B.
484.

(1855.)

(1894.)
A. C. 335.

40 Ch. D.
435.
(1889.)

Supra.

L. R. 1 Eq.
697.

(1866.)

3 L. J. 66.
(1824.)

3 V. & B.
78.

(1814.)

an identical result. The copyright, therefore, is neither in the expression nor in the substance; it is in the compiler's labour. Any one is at liberty, for instance, to compile a press directory, none the less because another has previously compiled one. The second compiler, however, is not entitled to appropriate the result of the previous compiler's labour. He can compile one for himself, which may be identical in all material points with one already published; but he must go to the original sources of information, and not merely abstract what the first writer has collected.

(1892.)
3 Ch. 489.

(1896.)
1 Q. B.
147.

Supra.

COPYRIGHT IN REPORTS.—It is sometimes said that there is no copyright in mere news (*Walter Steinkopff*). After the decision of the Court of Appeal in *Exchange Telegraph Co. v. Gregory & Co.*, it is hardly necessary to discuss this. News is simply information, just as the matter of a directory is information. Like other information, it is protected in two ways. Its literary form is protected (*Walter v. Steinkopff*), and the labour and money spent in collecting it are protected. There is no doubt as to the copyright in the literary form, and any difficulty as to the copyright in the labour and money spent in collecting news arises from a cause affecting all literary work not purely imaginative. As we shall see, a fair use of such work is not a breach of the copyright in it. The vagueness of the copyright is due to the impossibility of laying down any rule as to what is or what is not a fair use. Thus the real question is not whether there is or is not copyright in news, but what amounts to an infringement of the copyright which undoubtedly subsists in it.

See *infra*,
p. 106.

It has been pointed out that there is copyright in a summary of the proceedings in a Court of Law. It has

not as yet, however, been decided that there is copyright in the report of a judgment or speech, although protection appears to have been given in *Butterworth v. Robinson* to a complete report of a trial without distinction between the part which was an account of the facts composed by the reporter, and the verbatim report of the judgment. It is difficult to see what distinction there can be between the skill and labour necessary to collect the names and residences of the inhabitants of a district or to compile a list of judgments, and the skill and labour of the reporter who takes down spoken words and reduces them into a permanent form, that the result in the one case should be protected and in the other should not. Probably, then, the Court would hold that there is copyright in the report of a speech; but, no doubt, so far as piracy is concerned, the Court would apply liberally Lord Herschell's dictum in *Leslie v. Young*: "The real truth is that, although it is not to be disputed that there may be copyright in a compilation or abstract involving independent labour; yet when you come to such a subject-matter as that . . . it ought to be clearly established that, looking at the matter as a whole, there has been a substantial appropriation by the one party of the independent labour of the other, before any proceeding on the ground of copyright can be justified."

⁵ Ves. 709.
(1801.)

(1894.)
A. C. 335,
at p. 341.

NOT ILLEGAL.—In the third place a literary composition in order to be the subject of copyright must not consist of matter the publication of which is illegal. There is no copyright in matter which is libellous in the broadest sense of that term—that is to say, which is defamatory, blasphemous, obscene, or seditious. The law on this point is well expressed in *Stockdale v. Onwhyn*.

⁷ Dow. &
Ry. 625.
(1826.)

This was an action for piracy. The subject of the alleged piracy was a work called "The Memoirs of Harriet Wilson," which purported to be an account of the life and adventures of a courtesan, and contained statements reflecting upon the character of various persons, parts of it also being of a very licentious nature. It was held that the work being libellous could not be the subject of copyright. Holroyd, J., in delivering judgment, stated the *ratio decidendi* in this way: "The ground of this action, if any, must be that the defendant has worked an injury to the plaintiff's exclusive right of publishing the book in question: now, it is criminal in him to publish such a book; then he has no right to publish it, and having no right, he has sustained no injury, and has no ground of action."

Page 629.

The principle of this decision has been extended to cases where the work is not libellous in its nature, the illegality arising from a criminal misrepresentation made as to its authorship. Where this misrepresentation amounts to false pretence the Courts will refuse to protect the dishonest author or publisher from piracy.

1 C. B.
893.

(1845.)

At p. 907.

The leading case upon this point is *Wright v. Tallis*. The work, the copyright of which was alleged to be infringed, was a book of devotion called "Evening Devotions," and on its title page it was stated that it was "translated from the German of C. C. Sturm." Sturm was a religious writer whose productions were at the time greatly valued in England, and the defence was that the plaintiff, knowing this, had falsely and fraudulently alleged that this work was from his pen in order to defraud and deceive the public. On demurrer it was held that the defence was good. Tindal, C.J., said, "The publisher seeks to obtain money under false pretences; and, as not only the original act of publishing the work, but the sale of copies to each individual purchaser, falls within the reach of the same objection, we think the plaintiff cannot be considered as having a valid and subsisting copyright in the work, the sale of which produces such consequences, or that he is capable of maintaining an action in respect of its infringement."

PUBLICATION.—Copyright exists only in published works, “publication,” under the Copyright Act of 1842, meaning the sale or gratuitous distribution of copies. Publication must take place either first in the British dominions, or simultaneously in the British dominions and abroad (*Buxton v. James*). If the work be first published abroad, there is no copyright in it except such as may come to it through the various International Copyright Acts, and the Berne Convention (1885). The Act of 1886 (49 & 50 Vict. c. 33) was passed to enable Her Majesty to become a party to the Berne Convention, and since that date mutual copyright protection has been accorded in the case of most civilized countries by Orders in Council. The Act of 1842 (sect. 29) extends to all parts of the British dominions.

A NEWSPAPER A BOOK.—As it has been held in *Walter v. Howe*, overruling on this point *Cox v. Land and Water Journal Co.*, that a newspaper is a “book” within the Copyright Act of 1842; all the provisions of that statute concerning books apply also to newspapers, so far as the nature of the case will admit.

By sect. 3, the copyright in a book published during the author’s life shall endure for his lifetime and seven years after, or for forty-two years from the date of publication, whichever period may be the longer. In books first published after the author’s death, the copyright endures for forty-two years from the first publication.

Sect. 4 makes provision for books published before the passing of the Act; and sect. 5 empowers the Judicial Committee of the Privy Council to license the republication of a book when the author is dead, and the owner

of the copyright refuses to republish it, or to permit it to be republished.

Sect. 13. Sect. 13 provides for the registration of books at Stationers' Hall. As each single number of a newspaper is a book within the Act, a separate registration of a single number may be made under this section (*Dicks v. Yates*). But there is another section of the Act (19) which applies specially to the registration of periodical publications.

18 Ch. D.
76.
(1881.)
Sect. 19.

It may also be mentioned that the protection afforded by the Act extends to plates, illustrations, etc., contained in the newspaper or book (*Maple & Co. v. Army and Navy Stores*), and even to plates published as supplements to the newspaper, and having no physical connection with it, but referred to in it as a supplement (*Comyns v. Hyde*).

21 Ch. D.
369.
(1882.)
(1895.)
72 L. T.
250.

We now proceed to consider the law of newspaper copyright as it affects the proprietor and the writer respectively.

POSITION OF NEWSPAPER PROPRIETOR.—In order that a newspaper proprietor may secure copyright in articles or other literary matter appearing in his paper, three things are necessary. In the first place there must be an agreement, express or implied, between him and the writer, that the copyright shall belong to him; in the second place, he must have paid the writer for the article; and, in the third place, the newspaper itself must have been registered as a book at Stationers' Hall.

Sect. 18.
Sect. 18.
Sect. 24.

AGREEMENT WITH WRITER.—First, then, as to the agreement. The law as to this depends upon the interpretation put upon the following words in sect. 18 of the Act:—

When any publisher or other person shall . . . project, conduct, or carry on . . . or be the proprietor of any encyclopædia, review, magazine, periodical work, etc. . . . and shall employ any persons to compose the same or any volumes, parts, essays, articles or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions . . . shall be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, etc., . . . and paid for by such proprietor, etc., . . . the copyright in every such encyclopædia, etc., . . . and in every volume, part, essay, and portion so composed and paid for, shall be the property of such proprietor.

It is to be observed that these words do not make it necessary that there should be an express agreement that the copyright shall belong to the proprietor. Such an agreement may be, and as a matter of fact usually is, implied, from the circumstances surrounding the engagement. When there is no express agreement, the rule is that proof that the writer was employed to write, and was paid for writing the articles in question, will be sufficient to raise a presumption that the articles were written on the understanding that the copyright in them should belong to the newspaper proprietor.

The rule was laid down thus by Jervis, C.J., in *Sweet* ^{16 C. B.} ^{484.} *v. Benning*: “We all remain of the same opinion—that, (1855.) where the proprietors of a periodical employ a gentleman to write a given article, or a series of articles or reports, expressly for the purpose of publication therein, of necessity it is implied that the copyright of the articles so expressly written for such periodical, and paid for by the proprietors and publishers thereof, shall be the property of such proprietors and publishers.”

At the same time, the mere fact that the author receives payment for the contribution is not in itself

sufficient to prove that he was employed on the terms that the copyright should belong to the proprietor. In *Walter v. Howe*, where the action was for infringement of copyright in reprinting a memoir of Lord Beaconsfield which had appeared in the *Times*, and the only evidence of ownership was that the plaintiff had paid for the work, it was held by Jessel, M.R., that that was not sufficient; that the copyright might still be in the author, and that, therefore, the author should have been joined as co-plaintiff. (And see *Johnson v. Newnes*.)

17 Ch. D.
708.
(1881.)

(1894.)
3 Ch. 663.

40 Ch. D.
425.
(1888.)

It is not necessary that the agreement should be with a single proprietor, and on terms that the copyright should belong to him alone. A number of proprietors may combine to employ a writer, on condition that the copyright shall belong to all of them (*Trade Auxiliary Co. v. Middlesborough, etc., Association*), a point which, in view of the growth of Syndicates for the publication of novels and articles in several newspapers simultaneously, is of considerable importance.

PAYMENT OF WRITER.—In the second place, the writer must be paid. The words of the statute are: "On the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor," etc. As was pointed out by Vice-Chancellor Shadwell in *Brown v. Cooke*, in order to make sense of this, it is necessary that the words "and paid for" should be read in connection with the previous part of the sentence—"Shall be composed under such employment . . . and paid for" (see *supra*). The meaning, then, is in the words of the Vice-Chancellor in the above case, "That if the publisher of a periodical work employs a person to write articles for him, and pays

5 & 6 Vict.
c. 45, s. 18.

11 Jur. 77.
(1847.)

him for them upon the terms that the copyright shall be the proprietor's—*i.e.* the proprietor of a periodical work—the proprietor shall have the copyright of the periodical work containing all the articles.”

The facts in *Brown v. Cooke* shew how strict the Courts *Supra.* are on this point. Here there was a motion for an injunction to restrain the defendant from publishing certain articles which had appeared in the *Medical Gazette*. From the affidavits it appears that these articles were republished by the defendant with the consent of the writers; and it appeared, also, that while the publishers paid the editor of the *Medical Gazette* a salary, still they paid nothing directly to the writers. Whatever remuneration the writers received was the result of a private bargain between them and the editor, with which the publishers appeared to have nothing to do. The Vice-Chancellor, while admitting that under certain circumstances payment by an editor might be equivalent for all purposes to payment by the proprietor or publisher, declined to grant an injunction. It seemed to him, on the facts set forth in the affidavits, to be a matter that should go to trial, whether the payments made by the editor were such as were rendered necessary by the Act to vest the copyright in the proprietor of the paper.

Again, a contract to pay for an article is not sufficient to vest the copyright in the proprietor of the newspaper in which it has appeared: actual payment is necessary.

This was decided in *Richardson v. Gilbert*, which was a ^{1 Sim.} motion to dissolve an injunction granted to restrain the ^{N. S. 336.} defendant from publishing an article which had appeared in ^(1851.) the *Dublin Review*. From the affidavits it appeared that the plaintiffs had contracted to pay the author for the article. This was not considered by the Vice-Chancellor sufficient, as in his opinion payment was a condition precedent to any vesting of the copyright in the plaintiffs, but as it appeared from other affidavits that the copyright was in the plaintiffs, the judge held that the presumption was that the contract to pay had been fulfilled and payment actually made.

It is not clear from this case whether actual payment is a condition precedent to the vesting of the copyright, or only to the right to sue for any infringement of it. This distinction is of much importance; since, if actual payment is a condition precedent to the vesting of the copyright, it would appear that the proprietor is only entitled to restrain infringement occurring after the payment has been made (*Tuck & Sons v. Priester*). This point was expressly raised in the case, already several times referred to, of *Trade Auxiliary Co. v. Middlesborough, etc., Association*. Chitty, J., while refusing to decide the point, on the ground that if the defendants intended to rely upon it, they should have raised it in cross-examination, nevertheless seemed to indicate that, in his opinion, actual payment was merely a condition precedent to the right to sue. He said: "As has been pointed out, the part of the sentence 'paid for by such proprietor' is not grammatical, as it is quite clear that the proprietor of a magazine or periodical which has been registered cannot bring his action until he not only is registered, but has also paid the person who has composed the article for him."

19 Q. B. D.
630.

(1887.)

40 Ch. D.
430.

(1888.)

REGISTRATION.—In the third place the newspaper must be registered at Stationers' Hall. This, strictly speaking, is not a requisite to obtain the copyright, it is rather a requisite to secure a remedy against persons guilty of piracy. In the words of Chitty, J., in the case just cited, registration is only a condition precedent to suing. Consequently it is not necessary to register before infringement of copyright has taken place. It is sufficient if the registration is made at any time after publication and before the action for infringement of

copyright is brought; and when the registration is made and the writ for infringement is issued on the same day, in the absence of evidence to shew in what order as to time the two acts took place, the Court will infer that the registration preceded the issue of the writ (*Walter v. Steinkopff*). An action then lies for infringement occurring both before and after registration. This is clear from sect. 24 of the Act, which runs as follows:—

No proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry of the Stationers' Company, of such book, pursuant to this Act. Provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid.

The mode of registration is set forth in sect. 19 of the Act.

The proprietor of the copyright in any . . . periodical work . . . shall be entitled to all the benefits of the registration at Stationers' Hall under this Act on entering in the said book of registry the title of such . . . periodical work . . . the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

There have been many decisions upon this section, and the corresponding one which applies to the registration of books. The general result of these may be

- summed up as follows:—Registration of a periodical must be made *after* publication; and the registration, in order to apply to the whole series, must be of the first number, or of the first number published after the passing of the Act (1st July, 1842): (*Henderson v. Maxwell*).
- 4 Ch. D.
163.
(1876.) At the same time, as we have seen, the registration of any single number will be effectual to protect the contents of that number, as each number of a periodical is itself a book and may be registered separately under
- 18 Ch. D.
76.
(1881.) sect. 13 (*Dicks v. Yates*). Both the exact title of the newspaper and the exact date of its first publication must be registered, that is, in case of a monthly publication, for example, not only the month and year, but also the day of the month. Default or inaccuracy in either of these will render the registration useless
- 57 L. T.
864.
(1887.) (*Collingridge v. Emmott*). On assignment of the newspaper the assignee should be registered as proprietor
- (1897.) (*Liverpool General Brokers' Association v. Commercial Press Bureau*). Where the proprietor of the newspaper and the publisher are different persons, the names of both must be registered, but where the proprietors or publishers are a firm either the names of all the partners or the partnership name may be registered (*Low v. Routledge*). Where, however, the proprietors and publishers are a company, the company and not the managing director should be registered (*Petty v. Taylor*). A trustee for the real owner may, however, be registered (*London Printing and Publishing Alliance v. Cox*). The clause requiring the registration of the place of abode of the proprietor and publisher would seem to be sufficiently observed by the registration of the place of publication (*Nottage v. Jackson*).
- 49 L. T.
N. S.
(1883.) These requisites being complied with, the proprietor is

entitled to sue for infringement of copyright although the newspaper may not have been registered under the Newspaper Libel and Registration Act, and although the defendant may have taken the pirated matter not directly out of the newspaper registered at Stationers' Hall, but as it appeared in another paper belonging to the same proprietor and not so registered (*Cate v. Devon and Exeter Constitutional Newspaper Co.*). 40 Ch. D.
500.
(1889.)

The case of *Dicks v. Yates*, which has already been referred to, is important with respect to the time and mode of registration. The action was brought by the proprietor of a journal called *Every Week* against the proprietor of the *World* for infringement of copyright. The infringement complained of was in respect to a novel, "Splendid Misery," which was being published in the plaintiff's journal in weekly instalments. One of the objections taken by the defendant was that there was no proper registration. On the part of the plaintiff it was proved that there had been two registrations. The first registration was of the journal itself, *Every Week*, and this had been made before the first number of that publication had appeared. The second was of the proprietorship of the novel. In it the date given as the day of first publication was the date of the issue of the journal which contained the first instalment of the novel. This registration was made after all the work had been published. Held, by the Court of Appeal, that the registration of the journal, having taken place previous to publication was bad, and that the registration of the novel, though it took place after the whole story had appeared, was good. Jessel, M.R., in delivering judgment, said: "The first registration is a registration of *Every Week*. That appears to be a bad registration, because it was made before that periodical was published at all. But there is a second registration, and the second registration is of the first part of 'Splendid Misery,' and is in every respect correct, unless we accede to the argument that the registration is invalid because at the time the first part was registered the second and subsequent parts had been published. I am quite unable to follow that argument. The 18 Ch. D.
76.
(1881.)

registration informs the public of everything that the public could have any possible desire or right to know. It cannot be less a registration of the first part because the other parts had been published. Each part may be registered separately, each part was actually published separately, and each part is, according to the definition in the Act of Parliament, a book. It appears to me there is no tenable objection to the second registration."

40 Ch. D.
500.
(1889.)

The case of *Cate v. The Devon and Exeter Constitutional Newspaper Co.* may also be cited. Here Mr. Cate was one of three plaintiffs who applied for an interim injunction to restrain the defendants from publishing certain matter, the copyright of which was in the plaintiffs. It appeared that each of the plaintiffs was the owner of a newspaper, and that they united to pay certain persons for compiling a list of registered bills of sale, etc. This list each plaintiff published in his journal. These journals were not registered under the Newspaper Libel and Registration Act, 1881, but they were registered under the Copyright Act. Cate's journal, however, which was called and registered as the *Commercial Compendium*, issued a special edition under another name, which was circulated by a certain trade association as a confidential circular to its subscribers. This special edition was not registered at Stationers' Hall, and it was from this that the defendants abstracted the matter in question. The defendants resisted the motion on the following grounds, amongst others: (1.) That if there was any infringement at all it was only as to Cate's paper, from which the matter had been taken, and there was no proper registration of it under the Copyright Act, since the date of first publication registered was June 15, 1858, while, on the face of it, it was stated to have been established in 1855. (2.) That none of the plaintiffs' newspapers were registered under the Newspaper Libel and Registration Act, 1881. (3.) That the matter in question was not taken directly from any of the newspapers, but from the Trade Association's confidential circular which was not registered under either the Newspaper Libel Act or the Copyright Act. North, J., overruled all these objections. He held that wherever the matter was immediately taken from, since the copyright was in all the three plaintiffs, they were all entitled to an injunction,

that it lay on the defendants to shew that the registered date of first publication was not the actual date, and that the mere discrepancy between it and the statement on the front of the journal was not enough, and that registration under the Newspaper Libel and Registration Act was a duty of the publisher, and that, therefore, the proprietor could not lose his copyright by the publisher failing to register. Lastly, as to the non-registration of the circular edition of the *Commercial Compendium*, his lordship pointed out that registration of every form in which copyright matter was published was not necessary; that all that was necessary was registration of one publication containing it. His lordship in conclusion explained the difficulty which existed as to the exact form the relief should take, as there was no copyright in what should henceforth appear in the plaintiffs' journals, and accordingly an injunction could not be granted to prevent the defendants printing future issues of these journals. All that could be done was to grant an injunction as to the matter already published and printed.

Finally, the case of *Collingridge v. Emmott* may be referred to ^{57 L. T.} as shewing the need of great care in registering both the ^{864.} exact date of publication and the exact title of the news- (1887.) paper. This was a case of obvious and admitted piracy, yet the plaintiffs failed in their action because (1) the day of the first publication was not registered, but only the month; (2) the paper had been registered as the "*Warehousemen's and Drapers' Trade Journal; Failures and Arrangements*," while its real title was the "*Warehousemen's and Drapers' Trade Journal and Review of the Textile Fabric Manufactures*."

NATURE OF PROPRIETOR'S COPYRIGHT.—Where, then, the proprietor of a newspaper has employed the writer of articles appearing in it, has paid him, and has duly registered the newspaper or the articles separately, the copyright in the articles belongs to him, and he can restrain any other person from publishing them. The copyright thus conferred is, however, a specially limited one. It lasts for the whole term of forty-two years, but

5 & 6 Vict. he is not entitled to publish the articles separately
c. 45, s. 18. without the consent previously obtained of the author,
and at the end of twenty-eight years the author is entitled
to publish them separately without the consent of the
proprietor.

SEPARATE PUBLICATION.—What amounts to a separate publication? It would seem that republishing an article in any other form than as part of a reprint of the original issue of the newspaper which contained it will amount to a separate publication within the Act. This appears from the case of *Smith v. Johnson*.

33 L. J.
Ch. 137.
(1863.)

Here the plaintiff was the writer of a novel which had appeared in the defendant's paper, the *London Journal*. The defendant began the issue of what were called "supplementary numbers," which could be bought along with or separate from the current numbers. They were composed of stories and other matter which had previously appeared in the *London Journal*. On the plaintiff's story appearing in these supplementary numbers, he applied for an injunction on the ground that this was a separate publication. Stuart, V.C., held that he was entitled to the relief sought. "Publishing separately," said his honour, "must mean separately from something. What is that publishing which the Act of Parliament says shall not be separately made? It must be the publishing of the part or portion separately from that which has been before published."

1 John. &
Hem. 312.
(1860.)

Again in *Mayhew v. Maxwell* the facts were as follows: The defendant had employed and paid the plaintiff to write a short story for the Christmas number of the *Welcome Guest*. This number was called "The Christmas Number of the *Welcome Guest*, or the Wedding Rings of Shrimington-super-Mare, with stories about those who wore them for better and for worse," and it was made up of stories by five authors. Shortly after its publication the defendant announced his intention of republishing "The Wedding Ring," etc., together with an extra story by another author, the whole being

offered at a much higher price than had been charged for the Christmas number. Held by Vice-Chancellor Wood that this amounted to a separate publication of the plaintiff's story, and that he was entitled to an injunction.

POSITION OF WRITER.—In explaining the position of the proprietor of a newspaper under the Copyright Act we have indirectly explained that of the writer. It will be necessary to say only a few words more upon that subject.

As we have seen, the proprietor, when he has employed and paid the author, is, in the absence of special agreement, entitled to the copyright of matter published in his newspaper "as if he were actual author thereof." The "actual author," on the other hand, is entitled during the twenty-eight years following publication to prevent the newspaper proprietor from publishing such matter separately. This right is not dependent on registration. In the case last cited (*Mayhew v. Maxwell*) *Supra.* it was expressly decided that the author's right to prevent a separate publication of his work was not copyright within the terms of the Act, and that consequently so far as it was concerned no registration was necessary.

Upon the expiration of the twenty-eight years following publication, the right to publish separately reverts to the writer for the remainder of the full term of *Sect 18.* author's copyright. It is to be noted that "author" here means, not the writer or actual author, but the proprietor of the newspaper; and accordingly the copyright subsists for forty-two years from publication, or during the natural life of the proprietor of the newspaper (not of the writer) and for seven years after, whichever may be the longer. *Sect. 3.*

It is to be observed that these are only the relations which the Act will create between writer and proprietor

in the absence of express agreement to a different effect. In sect. 18, it is provided that the writer may reserve the right to publish his article or other work separately immediately after its appearance in the newspaper, and in the same way he may agree that the whole copyright shall vest absolutely in the proprietor, who will then be entitled to copyright for the whole term, and to publish the work separately as soon as he think fit.

(1894.)
3 Ch. 663.

When a writer employed to write for a newspaper contracts that the copyright in his work shall be his, subject to the right of the newspaper proprietor to print it in his newspaper, he is not entitled to maintain an action for piracy against a third party until he has registered his copyright. If the work in question consists of a series of contributions under the same title, the registration of the first contribution is sufficient to protect the whole series (*Johnson v. Newnes*). He can register and maintain his action although he has not yet published the articles on his own account. It is true that under sect. 2 of the Copyright Act of 1842, a "book," to which alone copyright is given, is defined as a "volume, part, or division of a volume . . . separately published . . .;" but "separately published" in this connection means published so as to be distinguished or easily distinguishable from the rest of the newspaper (*idem*).

PIRACY.—Piracy may be shortly defined as the illegal reproduction, literally or substantially, of the whole or part of a work in which copyright exists.

The literal reproduction, without the consent of the owner of the copyright, of the whole work may be said to amount practically in all cases to piracy. But whether

the substantial reproduction of the whole work or the literal reproduction of part of it amounts to piracy, depends upon whether the reproduction goes beyond what the law considers a fair use of the copyright work. It is impossible to lay down a hard and fast line between what is a fair and what is an unfair use of a copyright work. Every case must be considered on its own merits, and in many instances which lie upon the borderland, the ultimate results will depend upon the personal inclination of the judge. Various rough tests may, however, be given, by which, as a rule, the question of fair or unfair reproduction may be decided. These tests vary according to the nature of the work in which copyright exists, and the nature and extent of the use made of it.

PIRACY BY LITERAL REPRODUCTION.—What will be held to amount to piracy by literal reproduction depends largely on the object of the reproduction. If made with the *bonâ fide* purpose of illustrating a review or criticism of the work, scarcely any limits will be placed upon the right to make excerpts. In the case of *Cary v. Kearsley*, Lord Ellenborough, L.C.J., expressed a doubt ^{4 Esp. 169.} whether the literal reproduction of the whole work would _(1802.) amount to piracy if it was reproduced not with the design of appropriating the benefit of the copyright, but with the object of refuting or annotating the views expressed in the work.

Where, however, the excerpts are not made for the purpose of illustrating a review or criticism, the test of whether they amount or do not amount to piracy seems to be the following:—Are they or are they not calculated to prejudice the owner of the copyright? And in deciding this point, regard must be had not merely to the

40 Ch. D.
425.
(1888.)

quantity but to the nature of the quotations. If the quotations are calculated to supersede to a greater or less extent the original work by making that work less interesting to readers in general, or by supplying all of it that is of interest or value to a certain class of readers, then, however small in amount the extracts may be, they will constitute a piracy upon the owner of the original work (*Trade Auxiliary Co. v. Middlesborough, etc., Association*).

In this case, which has already been several times alluded to, the facts were as follows: The plaintiffs were separate owners of three different newspapers, and they jointly retained and paid certain persons to compile lists of bills of sale and deeds of arrangement registered under the Acts of 1882 and 1887. It was proved that it required a certain degree of skill to do this, and the fees which had to be paid amounted in the aggregate to a considerable sum yearly. The defendants were an association established for the purpose of supplying trade information to the tradesmen in Middlesborough and the neighbourhood. By means of inserting fictitious entries in their lists, the plaintiffs were able to prove that the defendant Association was accustomed to abstract from these lists the entries which referred to Middlesborough and to circulate them among its members. There was no general publication. *Held*, both by the Court of First Instance and by the Court of Appeal, that this constituted a piracy. Chitty, J., in delivering judgment, said: "As to the amount, the defendants, as I say, take all that part which is material to them, and they take it for the same purpose, viz., for giving information to tradesmen in the district. Then, as regards the quantity that is in any particular number, it cannot be great, because the district is not very large; but it is not the case of a single taking. It is obviously, on the evidence, a case of taking week by week. Then it is a taking for the same purpose. It is therefore taking for a competing purpose, and I think the first point must be decided in favour of the plaintiffs—that the piracy is of that character

that an injunction ought to go against the repetition of it, but, of course, not against the repetition in respect to that in which the plaintiffs at present have no copyright, viz., their unpublished matter."

Much of the matter which appears in a newspaper is matter compiled from materials accessible to all, and as to such matter in most cases the literary form is merely the form that would be given it by any one using the same materials for the same purpose. As we have seen, the law gives the compiler of such matter a copyright in the result of his labour. This result includes not merely the form in which the matter is expressed, but the substance of such matter as brought together by his labour. The Courts will restrain the unfair use of either. But it is to be noted that they allow less freedom when the form is copied than when merely the substance is used.

In *Kelly v. Morris* the facts were as follows: The plaintiff was owner and publisher of the "Post Office London Directory," and the defendant was the publisher of what he called the "Imperial Directory of London." The application was for an injunction on the ground that the defendant's publication was a mere piracy of the Post Office Directory. It was alleged that the defendant had in compiling his Directory given his canvassers lists of inhabitants taken from the plaintiff's Directory, which the canvassers checked by going round and asking the persons if the information was correct. These lists so corrected he then incorporated in his Directory. But some blunders which appeared in the plaintiff's Directory appeared in the defendant's too. These were accounted for by the alleged negligence of one of the defendant's canvassers, who it was admitted had not made the necessary inquiries. *Held*, that on these facts defendant's Directory was a piracy on the plaintiff's. Wood, V.C., in delivering judgment, said: "In the case of a directory map, guide-book, or directory, L. R. 1 Eq. 697. (1866.)"

when there are certain common objects of information which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done. In the case of a road-book he must count the milestones for himself. In the case of a map of a newly-discovered island . . . he must go through the whole process of triangulation just as if he had never seen any former map and, generally, he is not entitled to take one word of the information previously published without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information, and the only use that he can legitimately make of a previous publication is to verify his own calculations and results when obtained. So in the present case, the defendant could not take a single line of the plaintiff's Directory for the purpose of saving himself labour and trouble in getting his information."

L. R. 5 Ch.
279, at p.
284.

(1870.)

Subsequently this case was explained in *Morris v. Wright*. There Giffard, L.J., said: "In *Kelly v. Morris* there was direct copying. Not only were the slips used for the purpose of canvassing, but the course adopted was this: when a slip was presented to the person who was canvassed, he was asked whether he authorized that particular entry; they proceeded to get his authority for its insertion, and the entry was copied in the book." Then his lordship cites the passage from the judgment above quoted, and proceeds: "If this passage goes further than what I take it to mean, I cannot doubt that it goes beyond what the law authorizes, etc. . . . It does not mean that he may not look into the book for the purpose of ascertaining whether it was worth his while to call upon that person or not; but it means that he may not take that particular slip and shew that to the person, and get his authority as to putting that particular slip in."

PIRACY BY SUBSTANTIAL REPRODUCTION.—By substantial reproduction is meant reproduction with colourable alterations. The difficulty in connection with this form of piracy is to decide when alterations are merely colourable, and when they are so considerable as to make

the matter not a reproduction but a new work. This is a question of degree, and, as such, no very definite rule can be laid down with regard to it. The law was very clearly stated by Knight Bruce, V.C., in the case of *Dickens v. Lee*.

In *Dickens v. Lee* the action was brought by the late Charles Dickens for piracy of his well-known "Christmas Carol." The defendant had published in "Parley's Illuminated Library" what he called "A Christmas Ghost Story, reoriginated from the original by Charles Dickens, Esq., and analytically condensed expressly for this work." Knight Bruce, V.C., held that this amounted to a clear infringement of copyright. "The defendant," he said, "has printed and published a novel of which fable, persons, names, and characters of persons, the age, time, country, and scene are exactly the same; the style of language in which the story is told is in many instances identical, in all similar, except when certain alterations by way of extension or substitution have been made, as to which, whether they improve or do not improve upon the original composition, it is not necessary for me to express any opinion. Now this has been said to be an abridgment, and as an abridgment to be protected. I am not aware that one man has the right to abridge the works of another. On the other hand, I do not mean to say that there may not be an abridgment which may be lawful, which may be protected; but to say that one man has a right to abridge and so publish in an abridged form the work of another, without more, is going much beyond my notion of what the law of this country is. The expressions of Lord Eldon, applied to a subject of copyright very different from the present, but still applied to the subject of copyright, are these: 'The question upon the whole is whether this is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation deserving the character of an original work.' And I agree that there may be such an use of another man's publication as, involving the exercise of a new mental operation, may fairly and legitimately involve it. It does not appear to me that there is anything in the present case which brings that which the defendant

8 Jur. 183.
(1844.)

17 Ves.
426.

has done within a legitimate use of the plaintiff's publication, within the terms 'fair exercise of a mental operation,' or within the expression of 'deserving the character of an original work.' I think it, therefore, entirely excluded from Lord Eldon's definition, if as a definition Lord Eldon meant it. It appears to me to be a mere borrowing with alterations and departures merely colourable, and when it is said that the difference of price and other circumstances of difference belonging to it are such as to render the conversion of no practical mischief to the plaintiff, the person whose property is taken is entitled to judge for himself how far he will consider that abstraction of his property to be prejudicial or not prejudicial. It is a valuable property, and he is entitled to be protected from the unauthorized use of it by another."

The law here laid down applies not merely to works of imagination, in which not only the form but the substance is, or is supposed to be, entirely original. It applies also to works of research and speculation, and to mere compilations. Indeed the protection of the law seems rather less when the matter is original than when it is not. There is no copyright in new ideas, or in new knowledge, or in new theories. Another writer is entitled to give the results of a philosopher's speculations or of a scientist's investigations and experiments, provided he gives them in such a way as to make his book or article not a mere reproduction of the book or article in which these results were published to the world.

L. R. 5 Ch.
251.
(1869.)

The law with regard to works of this description is discussed in the leading case of *Pike v. Nicholas*. There the plaintiff had published a book on "The Origin of the English Nation." The defendant subsequently published a book on the same subject, in which he referred to the plaintiff's book as one of the authorities on which his own was based. The two books were written with much the same object—to shew that the English nation was largely of Celtic descent; and both had much the same arrangement and the same arguments, and

referred to the same authorities. The defendant, however, alleged that he had not taken his authorities directly from the plaintiff's book, but from an author from whom the plaintiff himself took them, and to whom he was led by the plaintiff's book to refer. There was no similarity of style. The Vice-Chancellor gave judgment for the plaintiff, but, on appeal, it was held that there was no piracy. In delivering judgment, Giffard, L.J., said: "The Vice-Chancellor laid down most accurately in his judgment, 'that there is no monopoly in the main theory of the plaintiff, or in the theories and speculations by which he has supported it, nor even in the use of the published results of his own observations.' It would, therefore, at once appear, that the task undertaken by the plaintiff was an almost impossible one, unless he could shew that there were substantial passages either actually copied, or copied with mere colourable alteration. It would not do to shew merely one or two passages, but some material part of the book must be shewn to have been taken. . . . His lordship was satisfied that the defendant bestowed a great deal of labour and time on the manuscript, and also that there was, on his part, at all events some research. His lordship was also satisfied of this—which, in dealing with a question of copyright with reference to books such as these, was of great importance,—that the book of the defendant was his own composition, in this sense, that wherever he got the materials from, they were worked up by him into his own language."

And see *Leslie v. Young*, *supra*, p. 91.

(1894.)
A. C. 335.

ACKNOWLEDGMENT NO DEFENCE.—It is scarcely necessary in discussing the strict law of the case, to refer to the defence that is sometimes put forward, especially in newspaper cases, that, provided there is a full acknowledgment of the source from which the matter is taken, there is no breach of copyright in reproducing it. It is a well-known practice for weekly newspapers and magazines to invite the press at large to quote from their columns. Sheets of extracts are circulated for this purpose, and the republication of such extracts, if

accompanied with an acknowledgment, is looked on as a valuable advertisement. But such a practice cannot in any way bind newspapers that do not join in it, or that expressly forbid such reproduction. Acknowledgment may be of importance in the matter of damages, and to show that no *animus furandi* existed, but *animus furandi* is not necessary to constitute a breach of copyright. The sole question for the Court to decide is whether the amount of matter taken—whether openly or surreptitiously, without the consent of the owner—is such as to make the taking an infringement of copyright. As said by Page Wood, V.C., in *Scott v. Stanford*, “The Court can only look at the result, and not at the intention in the man’s mind at the time of doing the act complained of, and he must be presumed to intend all that the publication of his work effects.”

L. R. 3 Eq.
718, at
p. 723.
(1867.)

THE “CUSTOM” TO QUOTE.—Closely connected with the question of acknowledgment is that of the existence of a custom discussed at much length in *Walter v. Steinkopff*. It was spoken of by North, J., as “the alleged existence of a well-recognized general custom—a universal mutual understanding of journalists—a tacit convention to which the *Times* (the plaintiff in the case) was a party—that one paper may copy from another without asking permission, and that the consent of the proprietors of the paper copied may be taken for granted,” if certain conditions are observed. After discussing these conditions, the chief of which was that of acknowledgment, mentioned above, North, J., went on to say that even if all the alleged conditions had been complied with the defence would fail. “The plea of the existence of such custom or habit or practice of copying as is set up can no more

(1892.)
3 Ch. 481.

be supported when challenged than the highwayman's plea of the custom of Hounslow Heath. It has often been relied upon as a defence in such cases, but always has been repudiated by the Courts." As before, the question is one of consent. The fact that the majority of papers consent to and invite such quotation affords no defence in the case of any paper which chooses to challenge the practice. At the same time, previous tacit assent may be of importance as entitling the newspaper that reproduces the copyright matter to notice that the newspaper from which it is taken objects to the practice. If a writ for infringement is issued before such notice is given, the Court may, while deciding in the plaintiff's favour, refuse him the costs of the action. This is what happened in the case of *Marwell v. Somerton*, and the same course was followed as regards this portion of the defence in *Walter v. Steinkopff*. 22 W. R. 313.

Supra.

INTERNATIONAL COPYRIGHT IN NEWS.—Article VII. of the Berne Convention, which governs the copyright of English newspapers abroad, and of foreign newspapers in Great Britain, requires express notice on the part of the owner of the copyright in case he wishes to prevent quotation, and in the case of news and leading articles grants the fullest right of quotation with or without permission. It provides as follows :—

“ Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it is sufficient if the prohibition is made in a general manner at the beginning of each number of the periodical. This prohibition cannot in any case apply to articles of political

discussion, or to the reproduction of news of the day or current topics."

ILLUSTRATIONS.—As has already been pointed out, pictures or other illustrations, when published in a newspaper or along with it in such a way as to form part of it, are protected by the Copyright Act of 1842. The law applicable to them is then the same as that applicable to the rest of the newspaper. But there is nothing to prevent the separate registration of such pictures under the Copyright (Works of Art) Act, 1862, in which case protection somewhat more extensive than that given by the Copyright Act, 1842, will be afforded. Sect. 1 of the Copyright (Works of Art) Act, 1862, gives to the author of a painting, drawing, or photograph, or to the person to whom he may have assigned it for good or valuable consideration, "the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing and the design thereof or such photograph and the negative thereof." The words "and the design thereof" would seem to include a mere imitation of the design of the picture without the actual reproduction of any part of it (but see *Hanfstaengl v. Baines & Co.*). Substantially, however, the copyright in pictures is the same as that in literary matter, and the copying literally or with colourable alterations of the whole or of a substantial part of a copyright picture is piracy (*Brooks v. Religious Tract Society*). To constitute piracy, such copying need not be direct from the picture itself. The sketch of a "living" picture representing a copyright picture might possibly be so close as to amount to a copying at any rate of the design of such picture (*Hanfstaengl v. Baines & Co.*, supra, at p. 30), while a copy of a

25 & 26
Vict. c. 68.

(1895.)
A. C. 20, at
p. 23.

(1897.)
W. N.
25 (5).

photograph or other exact reproduction of a copyright picture would certainly be piracy (*Ex parte Beal*; *Turner v. Robinson*). L. R. 3
Q. B. 387.
10 Ir. Ch.
Rep. 121,
510.

PHOTOGRAPHS.—The inclusion of photographs among the works of art entitled to protection under this Act is a frequent cause of difficulty to newspaper proprietors. The words of the statute governing the case of photographs are involved and obscure even beyond what is usual in Copyright Acts. Their tenour is as follows:—

“The author . . . of every original . . . photograph . . . Sect. 1.
shall have the sole and exclusive right of copying, engraving,
reproducing, and multiplying such . . . photograph and the
negative thereof, by any means and of any size, for the term
of the natural life of such author and seven years after his
death, provided that when . . . the negative of any photograph
shall for the first time after the passing of this Act be sold or July 29th,
disposed of, or shall be made or executed for or on behalf of 1862.
any other person for a good or a valuable consideration, the
person so selling or disposing of or making or executing the
same shall not retain the copyright thereof unless it be
expressly reserved to him by agreement in writing, signed
at or before the time of such sale or disposition by the vendee
or assignee of such . . . negative of a photograph or to the
person for or on whose behalf the same shall have been made
or executed, nor shall the vendee or assignee thereof be
entitled to any such copyright unless at or before the time of
such sale or disposition, an agreement in writing signed by the
person so selling or disposing of the same, or by his agent
duly authorized, shall have been made to that effect.”

By sect. 4 the “person entitled” may register his Sect. 4.
ownership at Stationers’ Hall, such registration being
a necessary preliminary to taking action for infringe-
ment, and “no action shall be sustainable in respect of

Sect. 6. anything done before registration." By sect. 6 any person who shall, without the permission of the proprietor of the copyright, "repeat, copy, colourably imitate or otherwise multiply for sale, hire, exhibition, or distribution such photograph shall forfeit for every such offence a sum not exceeding ten pounds." The person who takes the photograph is evidently the "author" of it (*Nottage v. Jackson*), and the obvious intention of the latter portion of the clause above cited was to deprive the photographer of all rights over the photograph or the negative unless it was expressly reserved to him by agreement in writing. As a matter of fact it has had precisely the opposite effect in a great number of cases, especially those affecting newspapers. It is usual for photographers to invite prominent personages to sit for them without payment. The sitter receives a few copies gratis, and, if satisfied with them, generally orders a considerable number, and regards them as his own, just as if he had gone to the photographer and employed him to take the photograph. Some occasion, political or other, arising, the prominent person, by request or on his own initiative, sends the photograph to the papers for reproduction. But he has no right to do so, for when the verbiage of the section is disentangled it appears that, as the photograph was not executed "for or on behalf of" the sitter by the photographer, but by the photographer on his own behalf, the whole proviso therefore falls to the ground, and the copyright remains to the photographer. The proprietor of the newspaper publishing it therefore finds himself liable to a penalty of ten pounds for every copy of his paper published on that day.

¹¹ Q. B. D. ^{627.} (1883.) This is what happened in *Melville v. The Mirror of Life Co.*

(1895.)
² Ch. 531.

Melville, a photographer, requested one Crossland, described as a "sporting celebrity," to sit for him. He made no charge, and supplied Crossland with some free copies, and with additional copies on payment. Melville registered himself as proprietor of the copyright. The *Mirror of Life*, a sporting paper, applied to Crossland for a photograph, which he supplied, and which they reproduced. Melville sued the paper for penalties. *Held*, Kekewich, J., that plaintiff was the "author," and that, as he had not taken the photograph "for or on behalf of" Crossland, he was still proprietor of the copyright.

REMEDIES.—The ordinary remedies for breach of copyright are by injunction restraining further publication of the pirated matter, and damages for the breach of the copyright. The other remedies given by the Copyright Act are rarely put in force either against or by newspapers.

As to the remedy by injunction, the injunction will issue against the further publication of the pirated matter, even when it is (as in a newspaper) mixed up with other matter which the pirate is entitled to publish (*Jarrold v. Houlston*). The issue of an injunction, however, is always in the discretion of the Court, although, where a suitor's legal right is invaded it is the practice of the Court never to refuse it (*Martin v. Price*).^{3 K. & J. 708. (1857.)}

AUTHOR'S REMEDY.—There is a considerable class of writers who supply short articles, or sketches, or paragraphs of news to the newspapers in manifold copies, each paper making use of one of these having, according to the contract, a limited right of publication for a certain price named, the author reserving to himself the copyright. When other papers, as sometimes happens, instead of accepting such literary matter from the author and paying him for it, simply pirate it from some paper in which it has already appeared, the writer finds^{(1894.) 1 Ch. 276.}

himself practically helpless. He cannot sue in the local County Court for the price of the article; and to suggest that he should commence an action in the Chancery Division for infringement of copyright in the case of a scrap of matter valued at only a few shillings, is an absurdity. The only practical remedy would be a provision similar to that in "Bulwer Lytton's Act" for the protection of dramatic property (which was, by the Act of 1842, extended to musical property), by which, in case of infringement, the offender can be proceeded against summarily, "in any court having jurisdiction in such cases," for the recovery of a penalty of not less than forty shillings, or damages to the full amount of the benefit to the defendant or of the injury or loss to the plaintiff, whichever shall be the greater, together with double costs of the suit.

When the pirated matter is published in conjunction with other matter it is impossible to lay down any rule as to the measure of damages recoverable beyond this, that if higher damages are given than the copyright was originally worth they will be considered excessive. Of course the original value of the copyright will always be a matter of opinion. Where, however, matter published in a newspaper—such as a story or a series of articles—is published in a separate form, the damages obtainable may be ascertained by account. It would seem that in such a case the measure of damages is not the profit made by the infringer out of the sale of the pirated matter, but the gross amount realized by such sale (*Muddock v. Blackwood*). The author or owner of the copyright is also entitled to the delivery up to him of all unsold copies (sect. 23, Copyright Act, 1842).

All persons engaged in reproducing unlawfully a

3 & 4 W.
4, c. 15.

Sect. 2.

(1898.)
1 Ch. 58.

copyright work are parties to the piracy, provided, at any rate, they knew that the work was copyright, and that the owner of the copyright had not licensed the reproduction. The printers of a pirated edition have, under these circumstances, been held liable in damages (*Lamb* (1895.) v. *Evans*). W. N. 156.

LIMITATION.—Provision is made by sect. 26 of the Copyright Act, 1842, for limiting the period within which actions may be brought, and for costs. This section is very unhappily worded, still more unhappily repealed or amended (it is difficult to say which) by the Public Authorities Protection Act, 1893. The provision as to costs in sect. 26 is, shortly, that a successful defendant is to have “his full costs.” By this expression, it has been held, nothing more is meant than that he shall have ordinary “party and party” costs (*Avery v. Wood*). It (1891.) has been held, further, that this enactment does not ^{3 Ch. D.} 115. prevent the Court from refusing costs to a successful defendant if the Court thinks he should be deprived of them (*Pike v. Nicholas*). As, therefore, the clause seems L. R. 5 Ch. . to mean nothing, it matters little whether or not it has ^{251.} (1869.) been repealed. It is different, however, with the provision as to the limitation of the time within which actions may be brought. That provision is as follows:—

“All actions, suits, bills, indictments, or informations for Sect. 26. any offence that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months after such offence committed, or else the same shall be void and of none effect.”

It has been held that this enactment does not apply L. R. 18 to actions for injunctions (*Hogg v. Scott*), and also that ^{Eg. 444.} (1874.) an offence within it is committed every time a pirated

18 W. R.
281.
(1870.)

copy of a copyright work is sold (per James, V.C., *Jarrold v. Heywood*). It would appear, however, that an action for damages must be brought within a year after an offence within the section, and that the only damages which could be recovered would be damages accruing within a year before action brought. It is therefore of some importance to ascertain whether or not this provision has been repealed by the Public Authorities Protection Act, 1893.

Supra.

Sect. 1 of that Act reduces to six months after the offence, the period within which an action may be brought "against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such authority." Sect. 2 enacts that there shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies . . . (b) the proceeding is to be commenced within any particular time, . . . and, in particular, there shall be so repealed the enactments specified in the schedule of this Act." Sect. 26 of the Copyright Act, 1842, is specified in the schedule.

(1898.)
Ch. 58.

It has been suggested, on the one hand, that the effect of this enactment is to abolish altogether the limitation of actions imposed by sect. 26 (see *Muddock v. Blackwood*), and, on the other hand, that its effect is merely to substitute the six months' limitation enacted by sect. 1 of the Public Authorities Protection Act, 1893, for the twelve months' limitation of sect. 26 (see Editor's note, *idem*). It is submitted that neither of these views is strictly accurate. Sect. 1 of the Public Authorities Protection Act, 1893, applies only to proceedings against

persons acting in execution, or in intended execution, of a public or statutory duty. The title of the Act shews that this was the sole intention of the Legislature. Section 2 repeals the provisions of section 26 of the Copyright Act only as to "any proceeding to which this Act applies," that is, to any proceeding against persons acting in execution, or in intended execution, of a public or statutory duty. It can hardly be contended that a person pirating another person's copyright is acting in execution, or in intended execution, of any duty whatever. It is submitted therefore that sect. 26, as far as proceedings for piracy are concerned, is unaffected by the Public Authorities Protection Act, and that the operation of that Act extends merely to the acts of officials in carrying out the Act, *e.g.* in the seizure by Custom House officers of contraband copies of a copyright work, or in case of wrongful entries in the book of registry.

PART II.

CHAPTER I.

LIBEL AS A CIVIL INJURY.

IN order that an action of libel may lie for matter appearing in a newspaper, such matter must be defamatory to the plaintiff, and the defendant must have been a party to its publication.

DEFAMATORY TO PLAINTIFF.

Matter will be considered defamatory of the plaintiff when it is "calculated to convey to those to whom it is published an imputation on the plaintiff injurious to him in his trade, or holding him up to hatred, contempt, or ridicule" (Per Lord Blackburn, *Capital and Counties*

7 App. Cas. *Bank v. Henty*).

741, at

p. 771.

(1882.)

CERTAINTY OF APPLICATION.—The first condition required by this definition to be fulfilled, is that the matter complained of by the plaintiff must convey an imputation on the plaintiff. In other words, the plaintiff must shew that the matter referred, and would be understood by readers to refer, to him. It is not meant that he must be referred to by name. He may be referred to under a fictitious name (*Rex v. Clerk*), under asterisks in place of

1 Barn.
304.

(1728.)

his name (*Bourke v. Warren*), or under an allusion to a past controversy in which his name had been mixed (1826.)^{307.} (*Lawrence v. Newbury*); it does not matter how general or vague the reference is, provided that all or any persons who read the whole of the matter, are able to identify him as the person attacked. In the words of Lord Campbell in *Le Fanu v. Malcomson*, "Whether a man is called by one name, or whether he is called by another, or whether he is described by a pretended description of a class to which he is known to belong, if those who look on know well he is aimed at, the very same injury is inflicted, the very same thing is, in fact, done as would be done if his name and christian name were ten times repeated." And it is not necessary that the reference should be so evident that every reader would see it. If it be sufficiently clear to enable some persons to identify him with the person libelled, and those persons, or any of them, have actually read the matter and identified him, that is enough.

The old case of *Rex v. Clerk* is reported thus: "This was an information tried before the Chief Justice, which charged the defendant with printing and publishing an infamous libel called *Mist's Weekly Journal*, wherein the King's title to the Crown was openly struck at, his legitimacy called in question, and the persons of several of the Royal Family scandalously traduced under borrowed names; by representing the late King under the name of 'Merewits,' his present Majesty under that of 'Esreff,' and the Queen under that of 'Sultana.' . . . The Attorney-General answered that it lies upon the counsel for the King only to shew this construction which they have put upon the paper, is such as the generality of readers must take it in according to the obvious and natural sense of it. . . . The Chief Justice accordingly agreed the law to be so, and said that in Dr. Brown's case even irony was held to be a libel. So the jury found the defendant guilty."

64 L. T.
797.
(1891.)

In *Lawrence v. Newbury* the facts were as follows: In a debate in the House of Lords on the Clergy Discipline Bill, the then Archbishop of Canterbury had described in very strong terms the conduct of a certain clergyman whom he did not name. Just at that time a correspondence was proceeding in the *Hants Gazette* as to parochial affairs at Eversley, of which parish the plaintiff was rector. The defendant, who was a parishioner of the plaintiff, wrote to the *Hants Gazette* a letter under the heading, "Parochial Matters at Eversley," in which the following occurred: "I refer all readers of letters on this subject to the Primate's speech on the Clergy Discipline Bill." The plaintiff sued the defendant for libel, alleging in his statement of claim that the defendant's letter meant that he was the clergyman referred to by the Primate. The defendant applied to have the statement of claim struck out on the ground that it disclosed no cause of action. *Held*, that it was for the jury to say whether, taking all the circumstances into consideration, the defendant, by her letter, did not indicate that the plaintiff was the clergyman described by the Archbishop, and, if so, there was a good cause of action.

Where, however, there is nothing in the matter complained of, or in the circumstances under which it was published, to indicate to any reader that the plaintiff was specifically referred to, the mere fact that he belonged to the class assailed in the matter, or that certain persons read it as referring specifically to him, will not make the matter actionable.

1 F. & F.
347.
(1858.)

In *Eastwood v. Holmes* the defendant published a report of the proceedings of the British Archæological Association at one of its meetings. In the report was the following passage: "The remainder of the evening was occupied in the discussion of 'an account drawn up by Mr. C. on the recent forgeries in lead.' These are figures reported to have been obtained from the Thames, and called 'pilgrims' signs.' . . . The whole are proved to be of recent fabrication. . . . It is to be lamented that there are no legal means of punishing a gross attempt at deception and extortion." The plaintiff was a dealer

in these pilgrims' signs, and he sued the defendant, alleging that in this article it was suggested that he was guilty of fraud and extortion. The action was dismissed. In giving judgment, Willes, J., said, "Assuming the article to be libellous, it is not a libel on the plaintiff; it only reflects on a class of persons dealing in such objects. . . . If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual, which there is not here." During the hearing counsel for the plaintiff wished to ask a witness to whom witness thought the article referred, but the judge refused to allow the question.

DEFAMATION.—The second condition required by this definition to be fulfilled is that the imputation conveyed on the plaintiff must be injurious to him in his trade, or must hold him up to hatred, contempt, or ridicule.

Anything which reflects upon the plaintiff's moral, intellectual, or professional character is sufficient to fulfil this condition. It is impossible to lay down any rule of a more definite character on the subject. Whether or not any publication satisfies the condition is not a question of law, but a question of common sense. And decided cases are of little use in answering the question. Because a judge held or a jury found that matter published under one set of circumstances was defamatory of one plaintiff, it does not follow that another judge will hold or another jury find that similar matter, published under a different set of circumstances, is defamatory of another plaintiff. A few examples may, however, be given, less as instances of what has been held libellous than as shewing the considerations, not always very convincing to the lay mind, which influence the Court in so holding.

Thus it has been decided that to write that the plaintiff is impecunious is defamatory (*Eaton v. Johns*), ^{1 Dowl.} N. S. 602 (1842.)

but to write that he owes money is not defamatory, since in the latter case there is no insinuation that he is not able to pay it (*Reg. v. Coghlan*). Again, it has been held to be defamatory to write that the plaintiff is unfeeling (*Churchill v. Hunt*), but not that he has sued his own mother-in-law in the County Court, even though the statement of claim sets out that the effect of this allegation was to make the plaintiff a subject of suspicion to the community (*Cox v. Cooper*). Again, it has been held to be defamatory to write that the plaintiff is insane (*Morgan v. Lingen*), or that he is grossly bigoted in religious matters (*Tracy v. McKenna*). And a libel may be conveyed in an illustration shewing the plaintiff in a degrading situation (see *Du Bost v. Beresford*) or in a degrading company (*Monson v. Tussaud*), or it may be conveyed in an illustration and in the letterpress taken together, in which case the publisher of the illustration and the publisher of the letterpress, if they were different persons, would both be liable apparently for the whole libel (*Watts v. Fraser & Moyes*). And a libellous meaning may be contained in matter on the face of it laudatory, where it is clear the praise is ironical, as, for instance, by describing the plaintiff as "an honest lawyer," and then going on to insinuate improper practices on his part (*Boydell v. Jones*). A libel may be conveyed in a jest (*Donoghue v. Hayes*), but when it is clear to readers that a jest merely was intended, and "not the grave imputation suggested by a mere consideration of the words themselves," the jury are entitled to find that there is no libel, whatever language may have been used (*Australian Newspaper Co. v. Bennett*).

A distinction of great importance in the law of slander or verbal defamation is that established between mere

4 F. & F.
316.
(1865.)

2 B. & Ald.
685.
(1819.)

9 L. T. 329.
(1863.)

8 L. T. 800.
(1863.)

Ir. Rep.
4 C. L. 374.
(1869.)

2 Camp.
511.
(1810.)

(1894.)
1 Q. B.

671.

7 C. & P.
369.
(1835.)

4 M. & W.
446.
(1838.)

Ir. Ex. Rep.
265.
(1831.)

(1894.)
A. C. 284,
at p. 288.

abuse and slander touching the plaintiff in his trade or profession. The distinction can hardly be said to exist in the law of libel. In order that an action may lie against a defendant he must have published of the plaintiff something which holds the plaintiff up to ridicule, or contempt, or hatred, and if what he has published does not do this, it does not matter whether it is or is not published of the plaintiff in his trade or profession (*Clay v. Roberts*).^{8 L. T. 397. (1863.)} Of course the fact that the plaintiff follows or has followed a certain trade or profession, may make matter defamatory of him which would not be defamatory if published of another not following the same occupation. Thus it would hardly be libellous to write of a doctor that he knows no law, because such a statement would convey no imputation on his moral, intellectual, or professional character; but it would be different if the same matter were published of a lawyer (*Bankes v. Allen*).^{1 Roll. Abr. 54. (1616.)} The plaintiff's occupation is, in other words, like every other circumstance of the case, an element to be considered, in order to see if the matter reflects upon him personally (*South Hetton Coal Co. v. North Eastern News Association*, per Lord Esher, M.R.).^(1894.) If it does not reflect upon him personally the fact that it may have a tendency to injure him in his trade or profession will not make it defamatory of him, though, as we shall see, it may under certain circumstances give rise to an action for slander of title or of goods.^{1 Q. B. 133, at p. 138. See *infra*, p. 198.}

TRADE LIBELS.—This point is important in regard to matter published, not of the plaintiff himself primarily, but of his property or goods. In such cases the question always is whether the matter is such as to import an imputation as to his conduct in business. If it be, it is

a reflection on his capacity or character as a business man, and is a libel; if it be not, there is no libel; and in every case it is for the jury to say whether it so reflects on him or not.

23 J. P. 59. In *Russell v. Webster* the plaintiffs were proprietors of
(1874.) the *Army and Navy Gazette*, the defendant the publisher of the *Broad Arrow*. The *Broad Arrow* accused the *Army and Navy Gazette* of publishing weekly, for valuable consideration, the advertisements of usurers. "The paper we have named," it added, "takes other advertisements cheap—on a third of their scale for instance—to induce respectable advertisers to appear in the usury and quack doctor page." At trial it was proved that the plaintiffs did not manage the *Army and Navy Gazette*, that there was no special page in that paper for usury and quack doctor advertisements, that money advertisements were charged 25 per cent. more than others, and that respectable advertisements were not taken at a cheap rate. The jury found for the plaintiffs, damages £5. On motion to enter a non-suit or judgment for defendants it was argued *inter alia* that the libel did not cast any imputation on the proprietors, but was merely a criticism of the management of the paper, and that at most it was only slander of title, and therefore special damage must be proved, which had not been done. The Court refused the rule. Bramwell, B., said: "The plaintiffs conduct an enterprise, and the defamatory words are published of them as the conductors of this enterprise; it is therefore a charge against them in their professional character, and, consequently, it is not so much a case of slander of title as slander of conduct."

(1894.) In the *Australian Newspaper Co. v. Bennett* the plaintiff
A. C. 284. Bennett was the manager, conductor, and part proprietor (but not editor) of a Sydney newspaper known as the *Evening News*, and the defendants were proprietors of another newspaper known as the *Australian Star*. The *Australian Star* published, "According to the Market Street *Evening Ananias*, both Kemp and McLean won the boat race yesterday. Poor little silly Noozy." The plaintiff thereupon sued the defendants for libel, alleging that the meaning of this notice was that the matter

which the plaintiff was in the habit of publishing or allowing to appear in the *Evening News* was such, and his conduct and management of it was such, that the paper had become notorious for wilfully false and lying statements. The defendants pleaded no libel. The jury by a majority found a verdict for the defendants. The plaintiff appealed, and the Court ordered a new trial on the ground that the words were necessarily defamatory of the plaintiff. On appeal to the Privy Council the order for a new trial was discharged. In delivering the judgment of the Court Lord Halsbury, L.C., said: "It is to be observed that the expression 'Ananias' is used in relation to the newspaper, and not to the plaintiff individually. No doubt offensive language applied to a newspaper may cast a reflection and be understood as casting a reflection upon persons connected with the newspaper. But it clearly cannot be maintained that every imputation upon a newspaper is a personal imputation upon everybody connected with the newspaper. Whether it is an imputation which would attach to any individual, and, if so, to whom, must depend in each case upon the language used, and upon the circumstances. . . . The question, therefore, is whether in all these circumstances it can be said that a jury of reasonable men could not possibly find that the article, although it contains that which had much better not have been published, did not reflect upon the plaintiff's character, or even upon his conduct in relation to the newspaper. The jury have so found, and their lordships are of opinion that it would be exceeding the legitimate function of the Court if the verdict were set aside and a new trial ordered."

At p. 288.

LIBELS ON CORPORATIONS.—The considerations set out in connection with libels on a plaintiff touching his profession, and trade libels, are very much in point when we come to consider libels, not on individuals, but on corporations. A corporation, like an individual, may be libelled, but in order to libel it the imputation must be not on the character of the individuals forming the corporation, but on the character of the corporation itself. It must, in other words, hold the corporation

up to hatred, ridicule, or contempt by imputing to it misconduct in its corporate capacity, and the misconduct imputed must be such as the corporation could commit. For instance, to impute to a corporation murder or incest or adultery would not be an actionable libel upon it, since a corporation could not commit such crimes (per Pollock, C.B., in *Metropolitan Saloon Omnibus Co. v. Hawkins*). In the same way a charge of corrupt practices would not constitute a good ground of action, at any rate where the corruption alleged consisted in the misconduct of individual members of the corporation (*The Mayor of Manchester v. Williams*). But a trading corporation, for example, might sue for a libel charging it with carrying on its business in an improper manner. Such a corporation has "a trading character, the defamation of which may ruin it" (per Kay, L.J., in *South Hetton Coal Co. v. North-Eastern News Association*).

4 H. & N.
87, at p. 90.
(1859.)

(1891.)
1 Q. B. 94.

7 (1893.)
1 Q. B.
133, at
p. 145.

In *South Hetton Coal Co. v. North-Eastern News Association* the plaintiffs owned certain collieries at South Hetton with a number of cottages in connection therewith, forming the bulk of the village. The defendants owned a newspaper called the *North-Eastern Gazette*, and they published in that paper a series of descriptive articles on colliery villages. That dealing with South Hetton described the houses there as insanitary, without proper conveniences, and generally unfit for human habitation. The plaintiff company, as owners of the houses in question, sued the defendants for libel, alleging that the article was calculated to injure their character and reputation as employers. At the trial the judge held that the article was privileged, as dealing with a matter of public interest; but the jury found that the article went beyond fair and *bonâ fide* criticism, and gave the plaintiffs damages. The defendants appealed on the ground (*inter alia*) that the conduct alleged against the plaintiffs might be inhuman, but that inhumanity was not an act that a company could be guilty of in its corporate capacity.

The Court dismissed the appeal, holding that it imputed misconduct to the plaintiffs in carrying on their business, and that this was a good cause of action without proof of special damage.

The law here laid down with reference to corporations applies equally to firms and unincorporated companies. In every such case an action lies, without proof of actual damage, for any matter published concerning them which tends to hold them up in their character as firms or unincorporated companies to hatred, ridicule, or contempt. In such actions, however, the claim must be only for injury done, or presumed by the law to be done, to them in such character. There can be no claim, for example, for the pain or annoyance caused to individual members of a firm (*Le Fanu v. Malcolmson*), unless ^{1 H. L. C. 637.} perhaps such members are personally joined as co-plaintiffs with the firm under R. 6, Ord. XVIII. R. S. C. (1848.)

MALICE.—It is not necessary that the matter should be published from a malicious motive or with an intention to injure the plaintiff. Evidence of actual malice, as this is called, is no doubt of great importance as affecting the amount of damages which the plaintiff should obtain; but in ordinary cases, where the defendant cannot claim privilege for his act, the absence of express or actual malice is no defence whatever.

In *Shepherd v. Whitaker* the defendant was proprietor of a newspaper called the *Bookseller*. By a blunder in the arrangement of the Gazette notices a notice of the dissolution of partnership between plaintiff and one Yeomans was put under the heading, "First Meeting under the New Bankruptcy Act." Upon discovering the mistake the plaintiff took immediate steps to explain it, and inserted in the next issue of the *Bookseller* an ample apology. The jury gave ^{L. R. 10 C. P. 502. (1875.)}

damages £50. On motion for new trial, on grounds, first, of no libel, second, of excessive damages, the Court refused the rule.

Since actual malice is not necessary in an ordinary action for libel—that is, where there is no privilege—an action will lie against a corporation. “Suppose that a corporation published a newspaper or printed books, and suppose that it was proved against them that a book so published had been read by an officer of the corporation in order to see whether it should be published or not, and that it contained a libel, an action lies there, because there is no question of actual malice or ill-will or motive” (per Lord Bramwell, *Abrath v. North Eastern Railway Co.*).

11 App.
Cases, 254.
(1886.)

And where a corporation, by its servant or agent, publishes a libel, it will be entitled to defend any action for libel brought against its servant or agent, and to use the corporate funds for this purpose, even when these funds have been subscribed for charitable purposes (*Breay v. Royal British Nurses' Association*).

(1897.)
2 Ch. 272.

MEANING OF WRITER.—What the defendant meant by his statement is of no importance, except as regards the amount of damages. The point is, what would his readers understand him to mean? However innocent his intention may be, if his expressions were such as to lead people reading them to think that he intended to reflect on the plaintiff's character, he is liable to an action for libel.

9 B. & C.
643.
(1829.)

In *Haire v. Wilson* the defendant was proprietor and publisher of the *Hull Advertiser and Exchange Gazette*. The plaintiff brought an action against him for libellous matter appearing in that paper. At the trial the judge left it to the jury to say whether the defendant intended to injure the

plaintiff. *Held*, that this direction was wrong in law. Lord Tenterden, C.J., in delivering judgment, said: "If the judge thought the tendency of the publication injurious to the plaintiff, he ought to have told the jury it was actionable, and that the plaintiff was entitled to a verdict."

In the great case of *Capital and Counties Bank v. Henty* 7 App. Lord Blackburn said: "The question is not whether the defendant intended to convey that (injurious) imputation: for if he, without excuse or justification, did what he knew or ought to have known was calculated to injure the plaintiff, he must (at least civilly) be responsible for the consequences, though his object might have been to injure another person than the plaintiff, or though he may have written in levity only. As was said in the opinion of the judges delivered in the House of Lords during the discussion of Fox's Bill, I think quite justly, no one can cast about firebrands and death, and then escape from being responsible by saying he was in sport."

In the same case Lord Bramwell says: "It is admitted on all hands that the common expression 'meaning' is incorrect and inadequate, for the question is not what the author of the alleged libel means, but what is the meaning of the words he has used; and more than that (for the words themselves may be harmless), if a libellous inference may be drawn from them, as a necessary or natural consequence, they are libellous."

CONSTRUCTION.—In every case of alleged libel the defendant is entitled to have his whole statement placed before the Court: the plaintiff cannot take one or two isolated sentences which appear to bear a defamatory meaning, and pin the defendant to them alone. Text and context must be read together, and every expression used must be interpreted, not separately, but in conjunction with what goes before and what comes after it.

In *Cooke v. Hughes* the action was for a libel contained in a pamphlet called "The Stafford Peerage, or the Impostor Unmasked." The pamphlet was a professed history of the Ryan & Moody, 112. (1824.)

life and adventures of the plaintiff, under a fictitious and libellous name, and it contained several distinct charges of crimes and opprobrious comments on those crimes. The plaintiff in his statement of claim set out various detached passages from the pamphlet. Counsel for the defendant claimed to have the whole pamphlet read on the ground that the plaintiff only set out the comments on the charges (which could not be proved) and not the charges themselves (which the defendant was prepared to prove, and thus justify the comments). Abbott, L.C.J., held, that the defendant was entitled to have the whole pamphlet read. On the other passages being read, Scarlett, the defendant's counsel, without calling evidence, asked the jury for a verdict on the ground that, as the plaintiff had not complained of the grave charges in the passages newly read, they should be taken as true. If so, the plaintiff had no character to be injured, and was therefore not entitled to any damages. The jury returned a verdict for one farthing. (See *Bembridge v. Latimer*, p. 193).

The words used must be taken to bear their ordinary meaning until evidence is given shewing that, in the particular case, an unusual meaning was attached to them. For this purpose, evidence of the circumstances surrounding the publication of the libel—such as the position of the plaintiff, the relations between the plaintiff and the newspaper proprietor or editor (if known to those to whom the alleged libel was published)—may be given. In the same way evidence may be given to shew the meaning which should be attached to cant or slang words, or provincialisms.

13 L. J. EX. 81. *Daines v. Hartley* was a case of slander, but the principle recognized in it applies equally to libel. The case turned on a remark made with regard to certain bills upon the house of which the plaintiff was a partner. The defendant had said, to the holder of these bills, "You must look out sharp that they are met by them." At the trial the plaintiff's counsel wished to ask the witness what he understood

by these words, but the judge refused to allow the question to be put in that way. Counsel refused to alter it. On the jury returning a verdict for the defendant, the plaintiff moved for a new trial on the ground that this question was improperly disallowed. The Court refused a new trial. Pollock, C.B., in delivering judgment, pointed out that the plaintiff's counsel should have first asked if there was anything to prevent these words from conveying the meaning they would ordinarily convey. If the witness had answered in the affirmative and explained what it was that suggested the unusual meaning, then counsel might ask him what he understood by them. "If words are uttered or printed, the ordinary sense of those words is to be taken to be the meaning of the speaker or writer; still, no doubt, a foundation may be laid"—for shewing that another meaning was to be attributed to them—"by shewing something else which has occurred; some other matter may be introduced, and then when that is introduced the witness may be asked with reference to that other matter, what was the sense in which he understood the words used."

It sometimes happens that words *primâ facie* innocent may, owing to some custom of a particular profession or trade, be defamatory of the plaintiff when read by a person acquainted with that custom.

In the recent case of *Russell v. Notcutt* the mere position of a name in an advertisement was held to convey a libel. The plaintiff was a public singer, and the defendant the editor and proprietor of the *Musical Exchange and Dramatic Observer*. Miss Russell was engaged to sing at a concert organized by the defendant, and her name, as that of the most distinguished singer, was advertised in the defendant's paper and in handbills issued by him, at the head of the list of artists. Subsequently, however, another lady was engaged, and her name was placed at the top, Miss Russell's being removed to the middle of the list, and placed among the names of singers of admittedly inferior professional standing. The statement of claim alleged that "by so placing her name in the advertisement the defendant intimated that the plaintiff's professional

12 T. L. R.
195.
(1896.)

position and vocal ability were of an inferior order, and that, in consequence, she had suffered in her professional reputation and position as a soprano vocalist." Evidence was called to prove that the top and bottom of the list were the recognized places of honour in such cases, and that for the name of a singer of high standing to appear in the middle of the list was calculated to damage her professional reputation. There was no evidence of special damage, and it was objected that, in the absence of such evidence, no action would lie. The objection was overruled, and the jury found for the plaintiff. On appeal, the Court (Lord Esher, M.R., Lopes and Rigby, L.JJ.) held that the case had been rightly left to the jury. "If there had been no evidence beyond the document," said Lord Esher, "I should have held that there was no evidence of libel, but here evidence was given of meaning; it was therefore impossible for the judge to say that the advertisement was not libellous."

Where words *primâ facie* innocent are alleged to be capable of having a defamatory meaning to particular readers the rule seems to be that, where there is anything in the circumstances or object of the publication which would suggest the defamatory meaning alleged, the jury are justified in holding it to be a libel; but where there is nothing to support such a suggestion, the fact that a defamatory meaning might possibly be read into the words or sentences is not sufficient to make them libellous. In the words of Lord Halsbury, L.C., in *Nevill v. Fine Art Insurance Co.*, "The words must be susceptible of a libellous meaning in this sense, that a reasonable man could construe them unfavourably in such a sense as to make some imputation upon the person complaining."

(1897.)
A. C. 68,
at p. 76.

7 App.
Cas. 741.
(1882.)

In the case of the *Capital and Counties Bank v. Henty*, already several times referred to, the facts there were as follows: The defendants were brewers in Chichester, and they had been

accustomed to accept cheques on the plaintiffs. In consequence of a disagreement with the plaintiffs' manager at Chichester, they issued a circular to their customers and tenants saying that henceforth they would not accept cheques on any branch of the plaintiffs' bank. Following the issue of this circular there was a run on the bank, to the serious injury of the plaintiffs. On action brought by the plaintiffs for libel, the innuendo set out that the circular imputed to them insolvency. Defendants denied this. On trial no evidence connecting the language of the circular with any circumstance which might be considered to impute insolvency was given. The jury disagreed. The defendants then moved that judgment be entered in their favour, on the ground that there was no libel. The case went to the Court of Appeal, where the majority of the Court reversed the decision of the Divisional Court and entered judgment for the defendants. On appeal to the House of Lords this judgment was affirmed, Lord Penzance dissenting.

In *Nevill v. Fine Art Insurance Co.* the plaintiff had been an *Supra.* agent doing business for the defendant company. Disagreements arose, and the directors of the defendant company resolved to close his agency. Negotiations, however, went on for some time, and finally the plaintiff terminated his connection with the company. The secretary thereupon issued to their customers who had done business through the plaintiff, a circular to the effect that the plaintiff's "agency at 27, Charles Street, St. James's Square, has been closed by the directors." *Held*, by the House of Lords, that this statement was not reasonably susceptible of a libellous meaning, and that the case should not have been left to the jury.

In *Williams v. Smith* judgment had been obtained in a 22 Q. B. D. County Court against the plaintiff, which judgment the ^{134.} plaintiff had satisfied, but had omitted to have notice of the (1889.) satisfaction entered in the Register of the Court. The defendant published a trade newspaper, in which appeared, under the head of "Gazette," a list of judgments entered in the County Court register, in which the name of the plaintiff with the judgment against him was inserted. The plaintiff brought an action for libel, alleging by innuendo that the insertion of his name in that column implied that the judgment remained unsatisfied, and that he was unworthy of credit. This

innuendo the defendant denied. The judge held that there was a case to go to the jury, and the jury found for the plaintiff. Manisty, J., in delivering judgment, said: "The questions are, whether the statement which has been published by the defendant is capable, as a matter of law, of the meaning imputed to it in the innuendo, and whether the jury were justified in finding that the statement bore this meaning, and was therefore libellous. The plaintiff is a hatter. The statement complained of was published in the *Hatters' Gazette*, in a column headed 'The Gazette,' and containing lists of bills of sale, county court judgments, and proceedings in bankruptcy affecting members of the trade. . . . The meaning imputed to the statement in the innuendo is that the judgment was not satisfied at the date of the publication. The avowed object of the column was to warn the trade against dealing with members whose credit was doubtful, and I think that, apart from authority, a judge might properly hold that the statement was capable of this meaning, and that a jury finding it in a 'black list' might reasonably so construe it."

Where ordinary and unambiguous words are used, and they are not *primâ facie* defamatory, and no ground is proved for considering them libellous, no action lies, even though damage has resulted from them to the plaintiff. See Lord Coleridge's remarks in *Hart v. Wall*.

2 C. P. D.
150.
(1877.)

INNUENDO.—It may be mentioned that where the published matter is on the face of it defamatory, the plaintiff need not assign any meaning to it, but simply cite it in his statement of claim. Where, however, it is not on the face of it defamatory, but is ambiguous, or the alleged libel depends on a certain meaning being assigned to certain words or phrases in it, it is not enough merely to cite it in the statement of claim. The defamatory meaning must be set out in what is called an innuendo. The plaintiff at trial is bound by

the meaning set out in his innuendo, and if he fail to prove that the statement really bears that meaning his action will be dismissed, unless the original words themselves, independent of the innuendo, were defamatory, in which case he may at trial abandon the innuendo—which was from the first unnecessary—and rely on the words themselves.

FUNCTION OF JUDGE AND JURY.—In considering whether matter is libellous, the functions of the judge and jury may be thus stated: it is the duty of the judge to say if, reasonably considered, the matter *can* be libellous; of the jury to say, if it *is* libellous. If the judge considers that the words complained of are capable only of one meaning, and that not defamatory, or are capable among several meanings of one that is defamatory, but no reason is given for attaching that particular meaning to them, or that there is no ground for holding that they apply to the plaintiff, it is his duty to withdraw the case from the jury and nonsuit the plaintiff. If, however, he considers that the words are *primâ facie* defamatory, or are ambiguous, and evidence has been produced that a defamatory meaning might reasonably be given them, it is then for the jury to say whether they are libellous or not.

In *Cox v. Lee, Kelly*, C.B., thus lays down the law: “It is only where the judge is satisfied that the publication cannot be a libel, and that, if it is found by the jury to be such, their verdict will be set aside, that he is justified in withdrawing the question from their cognizance.”

L. R. 4
C. P. 288.
(1869.)

In connection with this see Lord Selborne's remarks in *Capital and Counties Bank v. Henty*:—“I do not understand any of the learned judges in the Courts below to have been of opinion (nor do I think it is the opinion of any of your

7 App. Cas.
744.
(1882.)

lordships) that the question of libel or no libel must always and necessarily be left to a jury as to words not in themselves (*i.e.* in their proper and natural meaning, according to the ordinary rules for the interpretation of written instruments,) libellous, without some evidence either of a libellous purpose on the part of the writer, or of some other extrinsic facts calculated to lead reasonable men to understand them in a libellous sense. . . . In deciding on the question whether the words are capable of that meaning, he (the judge) ought not, in my opinion, to take into account any mere conjectures which a person reading the document might possibly form, as to some out of various motives or reasons which might have actuated the writer, unless there is something in the document itself, or in other facts properly in evidence, which to a reasonable mind would suggest, as implied in the publication, those particular motives or reasons."

PUBLICATION BY DEFENDANT.

In civil law a person publishes a libel when he knowingly or through negligence, by himself or by his servants, communicates it to a third person. The mere communication of the libel amounts *primâ facie* to a publication, and the communicator will be liable for publication unless he can shew that he did not in fact know, and that no duty lay on him to know, that the matter communicated by him was libellous. If he can shew this, the mere communication of the libel will not amount to publication.

16 Q. B. D. In the leading case of *Emmens v. Pottle & Co.* the facts were
 354. as follows: The defendants were newsvendors, carrying on
 (1885.) business in the city of London. In the course of their business they sold a newspaper called *Money*. A copy of this paper contained a libel upon the plaintiff, who brought an action against Pottle & Co. The defendants pleaded that they sold the paper in the ordinary course of their business, and without any knowledge of its contents. The plaintiff in his reply

contended that this amounted to a publication, and made them responsible at law for the libel.

The action was tried before Mr. Justice Wills; and in answer to questions put by him, the jury found "that the defendants did not, nor did either of them, know that the newspapers, at the time they sold them, contained libels on the plaintiff; that it was not by negligence on the defendants' part that they did not know there was any libel in the newspapers; and that the defendants did not know that the newspaper was of such a character that it was likely to contain libellous matter, nor ought they to have known so." On this finding the judge gave judgment for the defendants, and from this judgment the plaintiff appealed. The Court of Appeal dismissed the appeal.

In delivering judgment, Lord Esher, M.R., said: "I agree that the defendants are *primâ facie* liable. They have handed to other people a newspaper in which there is a libel on the plaintiff. I am inclined to think that this called upon the defendants to shew some circumstances which absolve them from liability, not by way of privilege, but facts which shew that they did not publish the libel. We must consider what the position of the defendants was. The proprietor of a newspaper, who publishes the libel by his servants, is the publisher of it, and he is liable for the acts of his servants. The printer of the paper prints it by his servants, and therefore he is liable for a libel contained in it. But the defendants did not compose the libel on the plaintiff; they did not write it or print it; they only disseminated that which contained the libel. The question is, whether, as such disseminators, they published the libel? If they had known what was in the paper, whether they were paid for circulating it or not, they would have published the libel, and would have been liable for so doing. That, I think, cannot be doubted. But here, upon the findings of the jury, we must take it that the defendants did not know that the paper contained a libel. I am not prepared to say that it would be sufficient for them to shew that they did not know of the particular libel. But the findings of the jury make it clear that the defendants did not publish the libel. Taking the view of the jury to be right, that the defendants did not know

that the paper was likely to contain a libel, and still more, that they ought not to have known this, which must mean that they ought not to have known it, having used reasonable care—the case is reduced to this, that the defendants were innocent disseminators of a thing which they were not bound to know was likely to contain a libel. That being so, I think the defendants are not liable for the libel.” And Bowen, L.J., said: “A newspaper is not like a fire; a man may carry it about without being bound to suppose that it is likely to do an injury. It seems to me that the defendants are no more liable than any other innocent carrier of an article which he has no reason to suppose likely to be dangerous.”

Every one, then, who is a party, by himself or by his agents, to the producing, printing, or issuing of defamatory matter appearing in a newspaper is *primâ facie* a party to its publication. If he knows the matter is defamatory no question as to his liability arises. If he does not know that it is defamatory, then his liability will depend upon whether there was a duty upon him to know that it was defamatory. If there was, he is liable; if there was not, he is not liable. And that duty is imposed on him in two cases. In the first place, it is imposed on him in all instances where he had reasonable grounds for suspecting that the matter was defamatory. He is then put upon inquiry, and if he issues the matter, he must issue it at his peril. In the second place, the duty of knowing may, in certain cases, be imposed by positive law.

It is to be noticed that it is those who are parties to the producing, printing, or issuing of the defamatory matter in the newspaper, not, as is sometimes said, to the producing, printing, or issuing of the newspaper itself, who are *primâ facie* parties to the publication of the defamatory matter. There are naturally many persons

parties to producing and printing the newspaper who have nothing to do with producing, printing, or issuing the libel. A sub-editor could not be liable for a libel in a part of the paper which he did not revise, nor a compositor for a libel which he did not set up. The connection of such persons with the newspaper is not in any way *primâ facie* evidence that they have been parties to publishing any particular matter appearing in it. If they are to be made liable, proof must be given that they were concerned in producing or issuing the matter complained of.

PROPRIETOR.—The proprietor of a newspaper is a party to the publication of any defamatory matter appearing in it, whether or not he knew or had reason to suspect that the matter was defamatory. There is imposed on him an absolute duty not to publish libels, and if he fails in this duty, even though it be through the misconduct of his servants, he is liable for the consequences (*Colburn* ^{1 Cr. Mess. & Ros. 73. (1834.)} *v. Patmore*, supra, p. 53). This duty is enforced, as we have seen, by the Libel and Registration Act, which makes ^{44 & 45 Vict. c. 60.} compulsory the registration of newspaper proprietors.

PRINTER.—The liability of the printer of the newspaper is usually assumed to be co-extensive with that of the proprietor. His business consists in reproducing the matter which forms the newspaper, and the law imposes upon him a duty to reproduce no matter that is illegal. This duty is recognized, as is that of the proprietor, by the law which requires the printer to put his name and ^{2 & 3 Vict. c. 12.} address on every copy of every paper printed by him. And it has been enforced by the Courts to what some may regard as an unjust extent.

7 C. & P.
369.
(1835.) In *Watts v. Fraser & Moyes* the plaintiff brought an action against Fraser, the editor, and Moyes, the printer of *Fraser's Magazine*, for two libels on him contained in that journal. One of the libels was a lithographed print. This print was executed by a Mr. Hulmandel, and the defendant Moyes had nothing to do with the striking it off. It was, however, referred to in the letter-press printed by Moyes. Lord Denman, C.J., held that Moyes was liable for it, and on motion for a new trial, on the ground that this constituted a misdirection, the rule was refused.

5 T. L. R.
721.
(1889.) In the case *In re The American Exchange in Europe ; American Exchange in Europe v. Gillig*, the printer, whose name appeared on the imprint of the London edition of the *New York Herald*, was proceeded against for contempt of court in publishing matter referring to a certain action then pending. Though affidavits were filed shewing that he was really only foreman printer, paid by a weekly salary, and without any control whatever over the conduct of the paper, he was held liable for matter appearing in it.

See *infra*,
p. 257. The principle of the above case would doubtless apply to the publication of libellous matter, as the liability for such matter appearing in a newspaper is at least as extensive as the liability for contempt of court. This view of the law, however, seems to have been departed from in a recent unreported case.

Times,
Feb. 7,
1890. In *Johnston v. The Christian Million Publishing Co.* the rule in *Emmens v. Pottle* was carried so far as to protect the printers and compositors of a libel. Here the action was brought against the *Christian Million Publishing Company*, who set up the pamphlet containing the libel, Messrs. Sears & Co., who machined it, and others. The defendants denied publication. The plaintiff did not go into the box to disprove the libel, and the evidence only shewed that one copy of the pamphlet had reached the outside world. The secretary of the *Christian Million Publishing Company* admitted that the company had set up the libel, but pointed out that their readers probably did not get the proof in consecutive galleys. He denied that

he had read the pamphlet, and said that the company employed no one to read pamphlets to see if they contained libels. On this Huddleston, B., held that there was evidence of publication to go to the jury. In summing up, his lordship read to the jury Lord Esher's judgment in *Emmens v. Pottle*, and left it to them to say if this case came within the principle there laid down. The jury found for the defendants. A motion for a new trial was afterwards made on the ground of misdirection, but was refused by the Divisional Court.

Though the learned judge's direction was upheld in this case, it is submitted that he was wrong in apparently permitting the jury to think that ignorance on the printers' part of the libellous nature of matter printed by them would constitute a good defence. Ever since Lord Hardwicke's time the rule has been that "if a printer print anything that is libellous, it is no excuse to say that the printer had no knowledge of the contents, and was entirely ignorant of its being libellous" (case 291). A printer is in a sense an author of libellous matter printed by him, since he reproduces and so multiplies the libel, and it seems clear that the rule in *Emmens v. Pottle* applies only to those who innocently disseminate the libel, and cannot be extended to those who are parties to its actual production.

PUBLISHER.—The person who by the imprint or otherwise holds himself out as being responsible for the publication of the newspaper, is also, it would seem, a party to the publication of all matter appearing in it, whether or not he was aware or had reason to suspect such matter to be libellous (*Blake v. Stevens; In re The American Exchange in Europe*). Where, however, there is no such holding out, and the publisher is simply a distributor, who sells the newspaper on commission for the proprietor,

it would seem difficult to distinguish his liability from
 See *infra*. that of any other vendor.

EDITOR.—There is no legal definition of “editor;” and, as has been already pointed out, the position and powers of editors vary enormously. Whether the so-called editor of any paper holds such a position as to make him a party to the publication of everything appearing in the newspaper, whether he knows of its libellous character or not, is, it is submitted, a question of fact. For instance, where there is a literary and a political editor of the same paper, it would be preposterous to hold the political editor responsible for matter inserted by the literary editor, and *vice versa*. In the same way, where the advertisement department is under the absolute control of the manager of the paper, and neither directly nor indirectly under the supervision of the editor, the editor could hardly be held liable for a libel in the advertisement columns. In other words, the editor of a newspaper is merely a servant of the proprietor, and he is, like any other servant, liable only for his own acts or negligence. The mere calling him editor cannot make him a party to the publication of matter, when, in fact, he was not a party to it. But once it is shewn that he is general editor, with a duty of making up the whole paper, he is liable for all matter appearing in the newspaper. He is then the person, to use the words of Pollock, C.B., in *Keyzor v. Newcomb*, “who has published libellous matter incautiously,” and being concerned in the actual production of the whole, he cannot escape liability by shewing he was not aware that it contained libellous matter.

1 F. & F.
 559, at
 p. 562.
 (1859.)

VENDOR.—As we have seen, the vendor of a newspaper

containing libellous matter is a party to the publication of it only when he knows or has reason to suspect that it contains libellous matter. As soon, however, as he becomes aware of the libellous matter, he is bound to stop the sale of it at once. Sometimes questions arise whether the stoppage has been effected with sufficient promptitude.

In *Mallon v. Smith* a libel on the plaintiff was published in a financial newspaper called the *Daily Bourse*, copies of which were sold at the defendants' bookstalls at various railway stations, and it was stated that placards were also displayed, bearing the words (referring to the libel), "So-All Swindle," in large characters. This statement, however, was contradicted. The plaintiff discovered the libel on the day of publication, and telegraphed at about 2.30 p.m. calling the attention of the defendants to it. He also complained to the persons in charge of various bookstalls belonging to the defendants, and asked them to stop the sale of the paper. They refused to do so on the ground that their orders were not to withdraw a paper from sale except when directed to do so by the defendants. It was alleged that in spite of the plaintiff's telegram and complaints the sale continued till late in the afternoon. The judge in summing up said that the defendants were bound to take reasonable care not to disseminate libels. The chief question in dispute seemed to be whether the defendants' course of business was reasonable in giving orders to stallholders to continue to sell papers after complaints had been made, until orders to the contrary were given from the manager's office. The jury found for the defendants. 9 T. L. R.
621.
(1893.)

AUTHOR OF LIBEL.—The author of a libel appearing in a newspaper is *primâ facie* a party to its publication (*Bond v. Douglas*), and he can free himself from liability only by shewing that it appeared neither with his consent nor by his default or negligence. 7 C. & P.
626.
(1835.)

In this connection, it is important to remember that although, as we have said, it is of the essence of a libel

that it should appear in writing, the term "author" includes not merely the writer of the libel, but also the inspirer of it. Verbal statements accompanied by a request to the reporters to notice them, and even unaccompanied by such a request, if uttered with the intention that they should be published, will make the speaker liable in libel. The recent rapid spread of "interviewing" in newspapers makes this rule of immense importance, since it enables the originator of a slander to be proceeded against, and also because occasionally, in cases of privilege, where an action would not lie against the newspaper proprietor, through want of evidence of actual malice on his part, it may be possible to prove malice against the author. It may be added, that where the libel appears anonymously, the editor cannot be compelled to disclose the writer's name.

Infra,
p. 211.

To make the author party to the publication of matter communicated by him to the newspaper for publication, it is not necessary that that matter should be published exactly as he communicated it (*Adams v. Kelly*). In the words of Montague Smith, J., in *Parkes v. Prescott*, "Where a man makes a request to another to publish defamatory matter, of which, for the purpose, he gives him a statement, whether in full or in outline, and the agent publishes the matter, adhering to the sense and substance of it, although the language be to some extent his own, the man making the request is liable to an action as the publisher." This principle applies equally to an oral statement and a written communication (*Tarpley v. Blabey*).

Ry. &
Mood. 157.
(1824.)
L. R. 4 Ex.
169, at
p. 179.
(1869.)

2 Bing.
N. C. 437.
(1836.)
Supra.

In *Parkes v. Prescott* the defendants, who were members of a Board of Guardians, were present at a meeting of the Board

where the conduct of the plaintiff was discussed. One defendant asked the other to make a statement, which proved defamatory to the plaintiff. In the course of the statement this defendant observed: "I am glad gentlemen of the press are in the room, and I hope they will take notice of it." The other defendant added, "So do I." The reporters published in the local papers a condensed summary of the statement. *Held*, that the defendants were parties to the publication of this summary. Montague Smith, J., said: "I agree that loose expression of a mere wish or hope that the proceedings should be published would not be sufficient to fix liability on the defendants in cases like the present. I think the words must be of such a kind, and used in such a manner, as to satisfy the jury that they amounted to, and were, in fact, a request to publish." At p. 177.

In *Adams v. Kelly* the defendant had told to a reporter of the *Observer* a story defamatory to the plaintiff, saying it would make a good case for a newspaper. The reporter took it down and afterwards published it, not in exactly the defendant's words, but in words identical in sense. *Held*, that the defendant was party to the publication. Ry. & Mood. 157. (1824.)

In *R. v. Cooper* the defendant was indicted for publishing a libel of and concerning the prosecutor, one Joshua King, rector of Woodchurch. The libel consisted of an article in the *Liverpool Chronicle*, headed "Strange Doings at Woodchurch. The Rev. Joshua King again"; and containing a ludicrous account of the burning in effigy of Mr. King and his brother by the tenants of Sir M. S., for poisoning foxes on Sir M. S.'s estate. At the trial the chief witness for the prosecution was the editor of the *Liverpool Chronicle*, and from his evidence it appeared that the defendant, on meeting witness by appointment, had asked him "to shew up" the Rev. Mr. King, and had given him an account of the burning in effigy. A week later he complained that the article had not yet appeared. The editor admitted that he had heard of the hanging up in effigy before defendant told him of it. It was contended at the trial that as the article was neither written nor dictated by the defendant, and as the facts had been learnt from other sources as well as from him, there was no publication as against defendant. But the Court held otherwise. On motion for a new trial, Lord Denman, C.J., 15 L. J. Q. B. 206. (1846.)

said: "Suppose there were a person whose powers of sarcastic penmanship were well known, and another person were to come to him and say, 'I wish you would write a libel on A. B.,' the person so employing the penman takes his chance of whatever may be written, and, if the matter written were libellous, would be answerable."

WHAT CONSTITUTES PUBLICATION.—Since publication consists in simply communicating, knowingly or by negligence, the libel to a third person, it follows that in the case of a libel appearing in a newspaper there are several publications of it before its final issue to the public generally. The delivery of the manuscript to the editor or manager constitutes a publication as against the writer (*Baldwin v. Elphinston*), even though the letter is not inserted in the paper (*British Empire Type-setting Co. v. Linotype Co.*), and such a publication, when the jury think the libel was of an expressly malicious character, may bring upon the writer a verdict for heavy damages (*Ibid.*). Similarly, the delivery by the editor of the manuscript to the printer will be a publication against both the editor and the proprietor, even though the libel is subsequently cancelled, and the delivery by the printer to the reader will be a publication as against the editor, the proprietor, the printer, the compositor who set it up (*Rex v. Knell*), and even, it has been held, against the machine man who was in charge of the press by which it was printed (*Rex v. Clerk*). It is submitted, however, that the Court would nowadays hold such of these as take a merely mechanical part in producing the libel and who know nothing of its libellous nature, to be within the rule of *Emmens v. Pottle*. Even in Lord Ellenborough's time a distinction was drawn between being conscious and unconscious parties to the

2 W. Bl.
1037.
(1775.)

Times,
Feb. 26,
1898.

1 Barn.
305.
(1728.)

1 Barn.
304.
(1728.)

Supra, p.
142.

publication. In *Rex v. Holt*, Lord Ellenborough said : ^{5 T. R. at p. 444.} “If the defendant could have shewn that he had published the paper in question without knowing its contents, as that he could not read and was not informed of its tendency until afterwards, that argument might have been pressed upon the jury.” It is difficult to distinguish between the cases of not being able to read the matter and not having any opportunity of reading it as a whole, so as to understand its purport, as is the case with those in the composing and machine departments (see *Johnston v. Christian Million Publishing Co.*). The considerations of public policy, which make it desirable to hold the proprietor, the printer, and the publisher, liable for a libel, even though they were not aware that it was a libel, do not apply to subordinate and purely casual agents.

LIMITED PUBLICATION.—When there is a limited publication of a libel, and one of the persons to whom it is published shews it to the person libelled, who sues the publisher, and recovers damages, no action by the publisher against the person who shewed the libel, for the costs and damages thereby incurred, will lie, unless the person shewing the libel did so in breach of an undertaking on his part not to do so.

In *Saunders v. The Seyd & Kelly's Credit Index Co.* the defendants were publishers of a work called the “Credit Index.” ^{75 L. T. 193.} Their canvasser left a copy with Saunders on approval. ^(1896.) Saunders, looking over it, found what he considered a libel on himself. He took the book to his solicitor, Chapman, and sued the defendants in libel. Chapman, when the book was left with him, looked over it, and found what he considered libels on others of his clients. He informed these, and they brought actions. In the action by Saunders the defendants counter-claimed against Saunders and Chapman for communicating to

these other plaintiffs the contents of the book and thus damaging the defendants. There was a condition in the book that subscribers should not communicate information contained in it. *Held*, that Saunders and Chapman, not being subscribers, were not bound by this condition, and that no action lay against either of them.

FOREIGN NEWSPAPER.—Publication of a libel in a newspaper issued out of the jurisdiction of the Court will render any person resident within the jurisdiction who is a party to such publication liable to an action; provided the plaintiff can shew that the publication of the libel was an illegal act by the law of the country where the newspaper appeared. The illegality shewn

(1897.)
2 Q. B. 231.

may be either civil, or criminal, or both (*Machado v. Fontes*). When the person within the jurisdiction who is a party to the publication is an agent of the newspaper proprietor, it may be possible to join the newspaper proprietor as co-defendant, even though he resides in the foreign country. Thus he may be joined under Ord. xi. r. 1 (*g*), as a necessary or proper party to the

11 L. T. R.
528.
(1895.)

action against his agent (*Chance v. Beveridge and The Freeman's Journal; Williams v. Cartwright*). Or where

(1895.)
1 Q. B. 142.

there has been, or is likely to be, publication also within the jurisdiction, an injunction to restrain such publication may be applied for, and the proprietor can then be joined

15 Q. B. D.
680.
(1885.)

under Ord. xi. r. 1 (*f*) (*Tozier v. Hawkins*).

L. R. 9
C. P. 393.
(1874.)

It is to be remembered that communication to a telegraphist is publication (*Williamson v. Freer*), and accordingly, when it can be shewn that the agent or correspondent of the foreign paper sent the libel by telegraph, an action will lie against him, whether the publication in the foreign newspaper was illegal by the law of the foreign country or not.

PREVIOUS PUBLICATION.—The fact that the libellous matter had been published by some one else before it appeared in the newspaper, and that the plaintiff did not sue the person liable for the first publication, does not make its appearance in the newspaper the less a publication, or the newspaper the less responsible for its appearance there.

In *Tidman v. Ainslie* the defendant published a pamphlet intended to vindicate Mr. and Mrs. Davies from charges brought against them by the officers of the London Missionary Society. In this pamphlet was reproduced a letter from the said Mr. and Mrs. Davies to the directors of the London Missionary Society. Action was brought by plaintiff, who was secretary to the society, for statements contained in that letter. *Held*, that the action lay, though the statements had been published before, though the name of a third person was given in the pamphlet as authority for the statements, and though the defendant honestly believed the statements to be true. ^{10 Exch. 63.} (1854.)

In *Harrison v. Pearce* the defendant was publisher of the *Sheffield Daily Telegraph*. An advertisement had been inserted in that paper by the committee of the Letter-Press Printers' Society at Sheffield, and signed by its president, W. Bingham. This advertisement contained statements reflecting on the plaintiff, who was owner of another local newspaper. Though an action was pending against Bingham and another person, it was held that one lay against the defendant, and that the jury in estimating the damages could not take into account the other actions on this latter point. ^{1 F. & F. 567.} (1858.)

[N.B.—This rule has been modified by the Law of Libel Amendment Act, 1888, see p. 226.]

Even when the person first publishing the defamatory matter was the plaintiff himself the subsequent unauthorized publication of it by the newspaper will render it liable to an action (*Cook v. Ward*). ^{6 Bing. 409.} (1830.)

In the same way not only are the printing and original

issue of a newspaper publication of the libel, but every subsequent sale of a copy of the newspaper containing the libel, no matter how long it may be after the original issue, constitutes a fresh publication on the part of the person selling it. The effect of this rule may be to make a libel once more actionable after the lapse of more than six years since its first publication, when, in the ordinary course, the Statute of Limitation would act as a bar.

4 Q. B. 185. In the case of the *Duke of Brunswick v. Harmer*, the defendant, who was proprietor of the *Weekly Despatch*, had, on (1849.) 19th September, 1830, published in that newspaper libellous matter regarding the plaintiff. Seventeen years afterwards, on 26th September, 1847, an agent of the plaintiff, by the plaintiff's direction, went to the office of the *Weekly Despatch*, and there bought a copy of the issue of the 19th September, 1830, which copy he afterwards delivered to the plaintiff. Action was brought in April, 1848. The defendant pleaded the Statute of Limitations; but the Court held that the sale of the paper in September, 1847, was a sufficient publication to take the case out of the statute, and further, that the jury, in estimating the damages, should not be directed by the judge to take into consideration only those resulting from that particular publication. The jury gave £500.

DEATH.—An action for libel is a personal action, and comes within the maxim, *Actio personalis moritur cum personâ*. Accordingly, on the death of the plaintiff, or of the defendant before verdict, the cause of action is gone (*Hatchard v. Mege*). And this is the case whether 18 Q. B. D. 771. (1887.) the defamation was on the plaintiff personally, or in the nature of a trade libel, provided in the last case it did not amount to slander of title or of goods (see *infra*).

CHAPTER II.

PRIVILEGE AND JUSTIFICATION.

WHEN defamatory matter is published in a newspaper, an action for libel will lie against every person who was a party to the publication of such matter, unless it shall appear that the publication was by law privileged, or that the defamation of the plaintiff was justifiable.

(1.) *PRIVILEGE.*

The publication of defamatory matter is privileged when, owing to the circumstances of the publication, the law will protect it regardless of the truth or justice of the defamation. The law may give such protection absolutely, or it may give it subject to conditions.

ABSOLUTE PRIVILEGE.—Absolute privilege exists only in certain cases where the law considers it for the public benefit that the greatest liberty of expression should be permitted. These occasions may be ranked generally under three heads—

(1.) Statements made in, and Reports and Proceedings published by order or under the authority of, either House of Parliament.

(2.) Statements made and documents used in judicial proceedings.

(3.) Reports of State Officials to their superior officers and all publications made as acts of State.

In all these cases, no matter how defamatory, malicious, and unfounded the statement may be, no action either
 20 Ir. L. R. of libel or of slander will lie (*Dillon v. Balfour*).
 600.

(1887.) It must not be assumed, however, that because the original statements and reports in these three classes of cases are the subjects of absolute privilege, their reproduction in a newspaper will in all cases be afforded similar protection. This point will be dealt with later. It is only necessary here to notice that Reports, Papers, Votes, or Proceedings of either House of Parliament which have been published by the order or under the authority of either House, are entitled to absolute privilege by 3 & 4 Vict. c. 9, s. 2. This applies only to the reproduction of the full Report or Paper. Sect. 3 of the same Act provides that partial privilege only is given to extracts from or abstracts of them.

Sect. 2 runs as follows :—

And be it enacted, that in case of any civil or criminal proceeding hereafter to be commenced or prosecuted, for or on account or in respect of the publication of any copy of such Report, Paper, Votes, or Proceedings, it shall be lawful for the defendant or defendants at any stage of the proceedings to lay before the Court or judge such Report, Paper, Votes, or Proceedings, and such copy, with an affidavit verifying such Report, Paper, Votes, or Proceedings, and the correctness of such copy, and the Court or judge shall immediately stay such civil or criminal proceeding; and the same, and every writ or process issued therein, shall be, and shall be deemed and taken to be, finally put an end to, determined, and superseded by virtue of this Act.

51 & 52
 Vict. c. 64.

By sect. 3 of the Law of Libel Amendment Act, 1888, it would appear that, subject to certain limitations,

absolute privilege is now extended to fair and accurate reports of judicial proceedings. As, however, other reports are still only partially privileged, we shall not further discuss this clause until we come to consider the whole subject of reports.

PARTIAL PRIVILEGE.—Partial privilege affects newspapers much more nearly, and is immensely more important to them than absolute privilege. It arises on occasions when the law considers it for the public benefit that freedom of publication should be permitted, provided that freedom is used for the purpose for which it is given. When it is used for another, and therefore for an improper purpose, the publication is said to be malicious, and the protection of the law is withdrawn.

MALICE.—Malice, or express malice, as it is sometimes called, to distinguish it from the presumed malice which renders every unprivileged libel actionable, is thus defined by Brett, L.J., in *Clarke v. Molyneux*:—"If the occasion ^{3 Q. B. D. 237, at p. 246.} is privileged, it is so for some reason, and the defendant ^(1877.) is only entitled to the protection of the privilege if he uses the occasion for that reason. He is not entitled to the protection if he uses the occasion for some indirect and wrong motive. If he uses the occasion to gratify his anger or his malice, he uses the occasion not for the reason which makes the occasion privileged, but for an indirect and wrong motive. If the indirect and wrong motive suggested to take the defamatory matter out of the privilege is malice, that does not mean malice in law, a term in pleading, but actual malice, that which is popularly called malice."

In the *Capital and Counties Bank v. Henty*, Grove, J., ^{5 C. P. D. 525, 542.} (1880.)

gave a further definition:—"I take 'express malice' to mean this: that it is not enough to say that the person publishing the libel disliked, or in his own mind internally wished to injure, a person, because a person may do perfectly right acts and yet may dislike the person with reference to whom he does them; there must be something in the act of the person to shew that he published the libellous matter not honourably, and not with a view of doing that which was right, but with a bye-motive, and that he did publish such a document knowing and believing that it would have the effect of doing what it ought not to do, namely, injury to the person not merely because he deserved to be injured or to be punished as an act of justice, or anything of that sort, but with the view of doing him an injury."

PROOF OF MALICE.—Whether a publication is privileged or not is a question of law, and one therefore for the judge to decide (*Hebditch v. MacIlwaine*). Once it appears that the publication is privileged it lies upon the plaintiff to shew malice on the part of the defendant (*Jenoure v. Delmege*). If he fails to produce any evidence of malice, it is the duty of the judge to withdraw the case from the jury and enter judgment for the defendant (*Stuart v. Bell*). If, however, there is evidence of malice, he must leave it to the jury to find whether there was malice in fact or not (*ibid.*). And to take away the privilege the jury must expressly find malice: no finding such as that he has exceeded the privilege will be sufficient to render the defendant liable (*Nevill v. Fine Art Insurance Co.*).

As to what is evidence of malice, anything which goes to shew that the defendant was actuated by any other

(1894.)
2 Q. B. 54.

(1891.)
A. C. 73.

(1891.)
2 Q. B. 341,
at p. 345.

(1897.)
A. C. 68.

motive than that which alone would excuse him is evidence to go to the jury (*Clarke v. Molyneux*). It is ^{3 Q. B. D. 237, at p. 245.} to be noted that the malice alleged must be the actuating motive. The mere existence of ill-feeling between those responsible for a newspaper and some third person would not destroy the privilege protecting the publication in the newspaper of the report of a debate in Parliament containing matter defamatory of that person, unless the sole motive for publishing it was to gratify that ill-feeling. And the fact that the editor did not believe the matter to be true would not be proof of malice (*Clarke v. Molyneux*). The question in all such cases is, did the editor publish the matter in discharge of his duty, or did he publish it with the intention of inflicting pain or annoyance on the plaintiff. As regards newspapers, the question of malice is more important in relation to comments on matters of public interest. There the newspaper is expressing its own views in its own language, and accordingly if the censure conveyed is unduly harsh (*Hebditch v. McIlwaine*), or if there is ill-feeling on the part of the person responsible for the newspaper, towards the person whose conduct is censured, as shewn by previous libels upon him (*Barrett v. Long*), or if the publisher of the libel is shewn to be a person so enthusiastic in support of certain views as to be incapable of doing justice towards persons outraging those views (*Royal Aquarium Co. v. Parkinson*), this will be evidence of malice to go to the jury, and the jury will be apt to think it sufficient evidence to shew that the opinion expressed is not fair and honest (see *infra*, p. 181). But in the matter to which privilege strictly so-called extends, the views and the language used are those of the persons whose speeches are reported, and so no evidence of malice

(1887.)

Supra, at p. 244.

(1894.)

² Q. B. 54.³ H. L. C.^{395.}
(1851.)

(1892.)

¹ Q. B. 451.

can as a rule be derived from them. And the existence of ill-feeling or enthusiasm on the part of the editor would hardly be considered sufficient to forbid his publishing matter which comes to him in the ordinary way of his business, and which all other newspapers publish.

PRIVILEGED PUBLICATION.—The publication of defamatory matter is privileged when such matter appears in a fair and accurate report of the proceedings of Parliament, of the Law Courts, of certain public bodies, or of lawful public meetings called for the discussion of matters of public interest and concern. This is a broad statement of a rule which has been created partly by the decisions of the judges and partly by Acts of Parliament. The following come within its protection.

REPORTS OF PROCEEDINGS IN PARLIAMENT.—We have seen that the Reports and Proceedings published by authority of Parliament are absolutely privileged. This does not cover newspaper or other reports of the statements made by members in the House. A fair and accurate report of the proceedings of Parliament is, however, protected if published without malice. This privilege was first formally recognized in the judgment of Cockburn, C.J., in the case of *Wason v. Walter*.

L. R. 4 Q.
B. 73.
(1868.)

In that case the facts were as follows: The plaintiff presented a petition to the House of Lords charging Chief Baron Kelly with having, thirty years previously, when he was a practising barrister, pledged his honour to a statement which was false to his own knowledge, with the intention of misleading an Election Committee of the House of Commons. The petition further prayed that a committee might be appointed to investigate the charge, and, if it was found

proved, that the House should concur with the House of Commons in praying the Queen to relieve Sir Fitzroy Kelly of his judicial position. The petition was presented by Earl Russell, who, however, declared that in his opinion the charge was fabricated. The petition was the subject of a debate, in which its author was severely dealt with. *The Times* reported the debate, and in an article criticized strongly the conduct both of the petitioner and of Lord Russell. On this the plaintiff brought an action for libel. Cockburn, C.J., directed the jury that, if the report was fair, it was privileged, and that the matter of the debate was of public interest, and therefore, if the comments on it were fair, they also were privileged. On both points the jury found for the defendant. The plaintiff moved for a new trial on the ground of misdirection. The rule was refused.

Extracts from and abstracts of Reports, Papers, Votes, or Proceedings of either House, which Reports, etc., have been published by order or under the authority of either House, are also, as we have already said, privileged if published *bonâ fide* and without malice. This is by virtue of sect. 3 of 3 & 4 Vict. c. 9, which runs as follows:—

And it is enacted, that it shall be lawful in any civil or criminal proceeding to be commenced or prosecuted for printing any extract from or abstract of such Report, Paper, Votes, or Proceedings, to give in evidence under the general issue, such Report, Paper, Votes, or Proceedings, and to shew that such extract or abstract was published *bonâ fide* and without malice; and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant or defendants.

Two points are to be noticed on this enactment. First, it does not require that the extract or abstract shall be fair; and secondly, it throws upon the defendant the onus of proving *bonâ fides* and absence of malice.

REPORTS OF JUDICIAL PROCEEDINGS.—Fair and accurate reports of proceedings in any Court of Justice open to the public are privileged unless their publication was prohibited by the Court itself or their subject-matter is seditious, blasphemous, or indecent. The reason of this rule is, in the words of Lord Campbell, C.J., that “the inconvenience arising from the chance of the injury to private character is infinitesimally small as compared to the convenience of publicity:” see

7 E. & B.
231.
(1857.)

Davison v. Duncan.

This was the rule established by numerous decisions of the highest courts. Recently it appears to have been modified by sect. 3 of the Law of Libel Amendment Act, 1888. That section runs as follows:—

A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter.

The most important question arising on this enactment is this: Does it confer, subject to the limitations set out, an absolute privilege on newspapers to publish reports of trials? We believe it does for several reasons. In the first place if it does not it is altogether useless, for newspapers had already, like everybody else, partial privilege with regard to the publication of such reports, and further, the restrictions put by it on such publication would be worse than useless, since, under the old law which is not repealed, newspapers are entitled to publish without such restrictions. Again, no reference is made in the section to malice, whilst in the very next section of the Act (4) it is expressly provided that reports of

public meetings to be privileged must not be published maliciously.

To benefit by this section the report must first of all be fair and accurate; it must be published in a newspaper as defined in the Act of 1881; it must be the report of proceedings publicly heard before a court exercising judicial authority; and finally, it must be published contemporaneously with such proceedings.

It will be remembered that a newspaper under the Newspaper Libel and Registration Act, 1881, must be published "at intervals not exceeding twenty-six days." Monthly magazines, annuals, &c., are therefore not included.

With regard to the proviso that the report must be of proceedings publicly heard before a court exercising judicial authority, two points are to be noticed. The protection being extended only to reports of proceedings publicly heard, it follows that reports of proceedings heard *in camera* are not protected. This restriction is quite consonant with the reason of the privilege. The privilege of reporting judicial proceedings is based on the fact that in England the administration of justice is public. Where for any reason it is not conducted publicly the right to report does not exist (*per* Lord Halsbury, L.C., *Macdougall v. Knight*). The second point is that the proceedings must be before a court exercising judicial authority. This would appear to include all sorts of courts, from the highest to the lowest, and all sorts of proceedings, including *ex parte* applications.

Whether *ex parte* applications to magistrates came within the privilege accorded at common law to reports of judicial proceedings was for a long time a vexed

14 App.
Cas. 200.
(1889.)

question, which may now be said to be settled beyond controversy. In *Duncan v. Thwaites* it was held that reports of such applications were privileged when the matter was finally disposed of by the magistrate, but not when the prisoner was committed for trial. In Ireland this distinction has been expressly overruled in *R. v. Gray*. Again, in *McGregor v. Thwaites* it was held that there was no privilege for reports of *ex parte* applications where such applications were as to matters over which the magistrate had no jurisdiction. This rule has been altogether overturned, by the decisions in *Usill v. Hales* and in *Kimber v. The Press Association*.

In *Usill v. Hales* the plaintiff was an engineer, and the libel complained of was an accurate report of an *ex parte* application made to a police magistrate by some workmen. The workmen in question appeared before the magistrate, and complained that the plaintiff had engaged them to work on a railway being constructed in Ireland, and that he had not paid them their wages. The magistrate told them that he could not help them, and that they must go to the county court. The *Daily News*, *Standard*, and *Morning Advertiser* reported this application, and the plaintiff brought actions for libel against all three papers. Lord Coleridge, C.J., held that the reports were privileged. His lordship based his judgment on a distinction between applications in their nature beyond the magistrate's jurisdiction and applications which would be within his jurisdiction, if the alleged facts on which they are based were proved. Reports of applications of the first kind he considered to be not privileged; of the latter kind to be privileged. Lopes, J., in the same case, held that want of jurisdiction does not take away the privilege, and that all reports of public proceedings before judicial authorities are privileged.

In *Kimber v. The Press Association* the defendants published a fair and accurate report of an application *ex parte* to justices for a summons for perjury against the plaintiff. It appeared

that the application was made to the justices who sat in the Court where they usually transacted public business, and that no order to exclude the public was made. It was contended that by sect. 19 of 11 & 12 Vict. c. 42, though the business of issuing summonses was judicial, the Court where such business was transacted was not an open court, and therefore there was no privilege. *Held*, that that section only gave the justices a discretion as to whether they will or will not exclude the public, and if they do not exclude the public the Court is an open court.

Finally the report must be published contemporaneously with the proceedings. Of course this condition cannot be taken literally, and as yet there has been no decision as to its exact meaning. Just as such words as “forthwith” and “immediately” in a contract are construed as meaning as soon as it is reasonably possible under the circumstances (*Ex parte Lamb, In re Southam*), so, no doubt, “contemporaneously” will be construed as meaning as nearly at the same time as the proceedings as is reasonably possible under the circumstances. Publication in the next issue—whether the issue be daily or weekly—of the newspaper would naturally constitute contemporaneous publication.

19 Ch. D.
169, at p.
173.
(1881.)

REPORTS OF OTHER PUBLIC PROCEEDINGS.—Newspaper privilege for reports of public proceedings other than parliamentary and judicial proceedings now depends on sect. 4 of the Law of Libel Amendment Act, 1888, which is substituted for sect. 2 of the Newspaper Libel and Registration Act, 1881. That section (4) runs as follows :—

A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any

meeting of a vestry, town council, school board, board of guardians, board of local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorized to act by letters patent, Act of Parliament, warrant under the royal sign manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of State, commissioner of police, or chief constable, of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously :

Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter :

Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same :

Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern, and the publication of which is not for the public benefit.

For the purposes of this section, "public meeting" shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

Here again the protection of the section is confined to reports in "newspapers" under the Act of 1881. It is also important to note the provision that all privileges

now by law existing are expressly reserved. Sometimes reports of proceedings coming within the words of the section are entitled to a wider privilege on other grounds, as for example reports of parliamentary or judicial proceedings. The Parnell Commission was a commission appointed by Act of Parliament, but at the same time it was a Court publicly hearing evidence, and as such reports of its proceedings were entitled to privilege whether they were of public concern and their publication for the public benefit or not. In the same way committees of the House of Commons for hearing evidence on private bills are within this section nominally, but reports of their proceedings are privileged independently of it. Further, the enactment does not authorize the publication of blasphemous or indecent matter. The law as to that is left exactly as it was.

We must consider further what reports come within the privilege given by this section, and on what conditions that privilege is given.

OFFICIAL NOTICES.—First of all privilege is given to publication of any notice or report issued for the information of the public by, and published at the request of, any Government office or department, officer of State, commissioner of police, or chief constable. The important point here is that the office or department must be a Government one, and consequently the privilege spoken of does not extend to notices or reports published at the request of mayors, magistrates, county councils, or school boards.

MEETINGS OF PUBLIC BODIES.—Secondly, privilege is given to reports of meetings, open either to the public

or to any newspaper reporter, of vestries, town councils, school boards, boards of guardians, boards or local authorities formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies; or of any commissioners authorized to act by letters patent, Act of Parliament, warrant under the sign manual, or other lawful warrant or authority, select committees of either House of Parliament and justices of the peace in quarter sessions assembled for administrative or deliberative purposes. County councils, district councils, parish councils, and parish meetings would come within the phrase "board or local authority formed or constituted under the provisions of any Act of Parliament," which also includes sanitary boards, town commissioners, etc.

PUBLIC MEETINGS.—Most important of all, privilege is given to reports of the proceedings of public meetings *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

In the first place, the meeting must be a "public" meeting. It has been decided that a congregation at service is not a public meeting within the Act, and therefore that a report of the sermon is not privileged
 10 T. L. R. (Chaloner v. Lansdown). The meeting must also be held
 290.
 (1894.) *bonâ fide*, that is to say, it must not be a sham or bogus meeting got up simply that statements made at it might be reported. And it must be lawfully held, which would seem to mean that for whatever the purpose the meeting is held it must be held in a legal manner, not riotously, for example, or in a place where it is an obstruction of

the thoroughfare. A religious or political meeting held in a crowded street is an example of a meeting for a lawful purpose held in an unlawful manner. It must, further, be held for a lawful purpose, therefore the report of a meeting held for the purpose of slandering an unpopular man or of inciting to a breach of the peace would not be privileged. Again, it must be held for the purpose of furthering or discussing a matter of public concern. "Public concern" is a new expression in law, and how it will be interpreted by the Courts it is difficult to say. Probably it will be held to be equivalent to "public interest," as that expression is understood in connection with the privilege of fair comment. If these conditions are satisfied, a report of the meeting will be privileged whether the admission to it was general or restricted, and whether newspaper reporters were admitted or not.

See infra,
p. 181.

This condition as to admission was inserted for the purpose of getting over the difficulty as to meetings where admission was by ticket. We venture to suggest the following as a criterion for determining what is and what is not a public meeting: Did persons at the meeting in question obtain admission simply as members of the public, or did they obtain it on account of some personal qualification?

CONDITIONS OF PRIVILEGE.—The privilege granted by the Act is subject to certain definite restrictions.

In the first place, the privilege will be lost if it be shewn that the report was published or made maliciously. *Supra*, p. 159. By the Newspaper Libel and Registration Act, 1881, it rested with the defendant to shew absence of malice. By this section the burden of proof is shifted, and the

plaintiff before he can take away the defendant's privilege must now shew the existence of malice.

Secondly, the privilege will be lost if it be shewn that the defendant was requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and refused or neglected to insert the same. No attempt is here made to define the precise conditions of the letter, either as to length or as to whether it shall be confined to matters of fact or may include matters of opinion and argument. It is only provided that the letter or statement must be a "reasonable" one. What is reasonable is a question of fact in determining which no doubt both the tone and the length of the letter or statement will be taken into consideration as well as the substance of it (*Risk Allah Bey v. Johnstone*). A letter may be unreasonably violent or unreasonably long as well as unreasonable in its assertions.

See *infra*,
p. 217.

Finally, the privilege does not protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

This condition, which is not very happily worded, has already given rise to considerable controversy. It is doubtful whether the Courts will hold that it requires the defendant to prove that the matter is not only of public concern, *but also* that its publication is for the public benefit; or simply that the matter is either of public concern *or* that its publication is for the public benefit. We are inclined to consider the former the more natural interpretation, as otherwise the words "that its publication is for the public benefit" would be useless, since everything the publication of which

is for the public benefit must be a matter of public concern.

This view of the law seems to be supported by the case of *Kelly v. O'Malley*.^{6 T. L. R. 62. (1889.)} That action was for a libel contained in a report of a public meeting published in the *Star* newspaper. The report was headed "Sugared," and it contained an account, not merely of the speeches delivered, but of the various interruptions—some of an insulting and disparaging kind—which came from members of the audience. The defendant did not deny the libel, but pleaded privilege under the foregoing section of the Act of 1888. In his summing-up Huddleston, B., said that in order to come within the protection of the Act the report must be true and accurate, it must not be published maliciously, and must be of public interest and benefit, and must not be indecent or blasphemous. His lordship previously, in the course of the address of the counsel for the defence (Lockwood, Q.C.), observed that the publication must be for the public benefit besides being of public interest, a proposition to which counsel acceded, adding, however, that anything of public interest must be also for the public benefit. The questions left to the jury were: First, was this a fair and accurate report? Second, if so, could any one say that these personalities had anything whatever to do with the public interest or benefit? The jury found for the plaintiff.

We have said that the words "public concern" will probably be held to mean the same as "public interest." Whether the publication is also for the public benefit will be a question of fact for the jury to determine—a task which they sometimes find difficult, as appears in the case of *Venables v. Fitt*, where the jury after retiring^{5 T. L. R. 83. (1887.)} returned to Court again to ask the judge how it could possibly be for the public good to publish a libel.

In *Rex v. Wright*, Lawrence, J., gave an explanation of^{8 T. L. R. 298. (1799.)} what is meant by the publication of a libel being for the public benefit, which has since been quoted with approval

by various judges. Where the general advantage to the country in having the libel made public more than counterbalances the inconvenience to the private persons whose conduct may be the subject of such libel, its publication will be held to be for the public benefit. In *Pankhurst v. Sowler* it was held that the question to be submitted to the jury was, under the Newspaper Libel and Registration Act, not whether the publication of the report was for the public benefit, but whether the publication of the defamatory matter in the report was for the public benefit. The Libel Law Amendment Act leaves this unaltered, and so a newspaper is still responsible for any defamatory matter published in a report of a public meeting unless the publication of that defamatory matter was for the public benefit. See Baron Huddleston's observations in *Kelly v. O'Malley*.

3 T. L. R.
193.
(1886.)

Supra.

FAIR AND ACCURATE.—In order to be privileged, all reports, whether of parliamentary, judicial, or other proceedings, must be fair and accurate. What, then, is a fair and accurate report? It need not be a full one, neither need it be an absolutely correct one; slight inaccuracies or omissions will not destroy the privilege (*Kimber v. The Press Association*). What is necessary to secure privilege appears to be: an account of what took place sufficiently full and accurate to enable a reader to form a substantially correct opinion of the whole proceedings. A speech in Parliament defaming the plaintiff must not be published, and all report of the reply to it left out (*Lewis v. Walter*). In the same way the evidence in chief must not be given and the cross-examination which shook or overthrew it omitted. It has been doubted whether even the judgment of the Court may be separately

(1893.)
1 Q. B. 65.

4 B. & A.
605.
(1821.)

published unless it contains a sufficient *resumé* of the facts of the case to enable a reader to form his own opinion on its merits.

In *Macdougall v. Knight* the question whether the report of the judgment in an action, when that judgment reflected upon the plaintiff's character, and neither contained nor was accompanied by a *resumé* of the evidence on which it was based, was a fair report of judicial proceedings, and, therefore, entitled to protection, was much considered. When the case first came before the Court of Appeal that Court expressly decided that the separate publication of the judgment in an action was entitled to privilege whether that judgment was right or wrong. "The responsibility for the accuracy of the judgment," said Lord Esher, M.R., "rests on the judge who delivers it, not on the person who publishes the report of it." The case afterwards went to the House of Lords, when the decision of the Court of Appeal was affirmed, but upon a different ground. Two of their lordships—the Lord Chancellor and Lord Bramwell—while not expressly dissenting from the Court of Appeal upon the point of privilege for reports of judgments, seemed to be inclined to hold that the fact that a publication was proved to be an accurate report of the judgment in an action, was not conclusive that it was therefore a fair and accurate report of judicial proceedings so as to entitle it to protection. The Lord Chancellor said: "I am not prepared to admit that the judgment of a learned judge must necessarily be privileged. It is obvious that a partial account of what takes place in a Court of justice may be the exact reverse of putting the person to whom the publication is made in the same position as if he were present himself. If the evidence of a witness containing matter defamatory to an individual were published, and the cross-examination which shewed the witness to be a person unworthy of belief were suppressed, it would obviously be a partial and inaccurate account of what took place; and if a learned judge's judgment or summing-up to a jury did not, in fact, give reasonable opportunities to the reader to form his own judgment as to what conclusion should be drawn from the evidence given, I think the publication of such partial, and in

17 Q. B. D.
636.
(1886.)

14 App.
Cas. 194.
(1889.)

At p. 200.

that respect inaccurate, representations of the evidence might be the subject of an action for libel to which the supposed privilege in what was said by a judge would be no answer. Nor do I think that there is any presumption one way or the other as to whether a judge's judgment does or does not give such a complete and substantially accurate account of the matters upon which he is adjudicating as to bring it within the privilege. If it be so, it must be proved to be so by evidence, and certainly not inferred as a presumption of law."

25 Q. B. D. The plaintiff afterwards brought a new action on the same
 1. libel, which the Court of Appeal dismissed on the ground of
 (1890.) *res judicata*. In delivering judgment the Court of Appeal
 See *infra*, referred to the observations of the Lord Chancellor and Lord
 p. 219. Bramwell. The Master of the Rolls and Lords Justices Fry and Lopes adhered to the former decision of the Court of Appeal—namely, that an accurate report of the judgment in an action, apart from the evidence, was entitled to privilege. Lord Esher, M.R., said: "The first thing to remark is, that the decision of this Court in *Macdougall v. Knight* as to privilege was not overruled in the House of Lords. Further, their lordships did not express any opinion on any point of law; all that happened was that two learned lords intimated their desire that it should not be taken that they had expressed any opinion. . . . It—the doctrine that reports of judgment are not *ipso facto* privileged—would be, it seems to me, against public policy and contrary to the very ground of the privilege—which is that the publication of what took place is merely a means of putting those who are not present in Court in the position of those who were present. There would be another and a practical difficulty as to what, if this were the rule, the reporter would do. If he reports the judgment, is he bound to plead that what the judge said was true and correct? In making the report he did not allege this, but only held out that the report was an accurate one of the judgment, and that may be true. Yet, if the suggestion is upheld, the accuracy of the report would be no justification, and it would be put on the reporter to go further and say that what the judge said was true. That may be the duty of a properly constituted Court of Appeal, but I do not see how it can be the duty of a reporter."

A report may be inaccurate and unfair as regards not merely the parties actually before the Court, but also as to third persons whose names have been mentioned in the proceedings. When that is the case there is no privilege as against such third persons.

In *Rumney v. Walter* the defendants published a report of a libel action concerning a circular, in which one Mathews had sued the author of a circular containing a statement to the effect that he, Mathews, had received money from the plaintiff for an illegal purpose. The circular contained further statements reflecting on the plaintiff which were not complained of in the action by Mathews. The whole circular was submitted to the jury, and was published in the defendants' report of the trial. At the trial the plaintiff had been called as a witness for Mathews, and had sworn that the statements reflecting on him were untrue, and counsel on both sides had accepted this evidence as correct. The defendants' report contained no reference to plaintiff's evidence, or counsel's acceptance of it. On action for publishing an unfair and inaccurate report it was contended for the defendants that there was no obligation on them to publish the plaintiff's evidence, as it did not concern the issue before the Court. *Held*, that whether the report was a fair or accurate one was a question of fact for the jury, and that there was evidence to go to them on this issue. Verdict for the plaintiff for £350. 8 T. L. R. 256. (1892.)

The burden of shewing that the report is fair and accurate seems to lie upon the defendant, but sufficient proof may often be obtained from the plaintiff's witnesses. And it would seem that on the plaintiff's witnesses admitting that there is no substantial unfairness or inaccuracy the judge may hold that there is nothing to go to the jury.

In *Kimber v. The Press Association* the plaintiff sued the defendants for publishing a report of an *ex parte* application for a warrant for perjury against him. The witnesses called for (1893.) 1 Q. B. 74.

him at the trial admitted that, save for two trivial inaccuracies, the report was fair and accurate. The judge held that there was no evidence of unfairness or inaccuracy to go to the jury. On appeal, held that this ruling was right.

A report verbally accurate may become unfair and inaccurate through the position in which it is placed or the object with which it is published.

22 Q. B. D. The recent case of *Williams v. Smith*, already cited, may
134. also be referred to in this connection. There the action was
(1888.) for the publication of a judgment recovered in the County
See *supra*, Court against the plaintiff. The judgment was published in
p. 139. a trade newspaper under the heading "Gazette," and in com-
pany with a list of bankrupts and bills of sale. The innuendo
was that the defendants suggested that the judgment was not
satisfied (when, as a matter of fact, it was satisfied), and that
the plaintiff was not a person worthy of credit. It was held
that there was evidence of this innuendo to go to the jury,
and the jury found for the plaintiff. On motion for a new
trial the Court refused the rule. In giving judgment Pol-
lock, B., said, "If this statement is to be regarded as a fair
report of a judicial proceeding it is privileged according to
law. I think the effect of the judgment of Lord Cottenham
in the House of Lords in *Fleming v. Newton*, with which
1 H. L. C. I agree, is to place the publication of a mere extract from a
363. record of judgments kept pursuant to statute on the same
(1848.) footing as a fair report of a judicial inquiry. But this is not
a case of the publication of a mere extract from a record of
judgments. This newspaper is called the *Hatters' Gazette*,
and it is published in order to give information to persons
carrying on business as hatters as to matters which are of
interest to the trade, among others as to the credit of mem-
bers of the trade. . . . I think it obviously of great import-
ance that such published statements as this should be really
true, and not merely true in the sense that they are accurate
reproductions, though that which they reproduce happens to
be an extract from a record of judgments."

On the other hand, a report in fact inaccurate may,

so far as the newspaper is concerned, be fair and accurate when the inaccuracy arose, not through its default but through the mistake of the official whose duty it was to record the fact reported.

In *Annaly v. The Trade Auxiliary Co.* the action was for the publication of a judgment, the alleged libel consisting in this, that the defendants' paper—*Stubbs' Gazette*—had published of the plaintiff that a certain judgment had been recovered against him, without qualification when, as a matter of fact, it had been recovered against him as his father's executor. From the evidence it appeared that the judgment in question had been recovered in England, and that afterwards it had been registered in the High Court in Ireland, being entered in both cases as against the plaintiff as executor. Through some error it was afterwards entered in the Registry of Judgments in Ireland merely as against Lord Annaly. This registry is by statute open to the public, and may be searched by any one on payment of a fee. From this the entry in the defendants' paper had been copied. Malice was not alleged, nor was it denied that the defendants' announcement was an accurate transcript from the Registry of Judgments; but it was contended that the announcement was false and defamatory of the plaintiff, and due to the defendants' negligence, since, by referring to the original judgment, they would have found that it was not against the plaintiff personally, but as executor. The defendants pleaded privilege. At trial the jury found for the plaintiff, £250 damages. On the application of the defendants, the Court of Exchequer entered the verdict for the defendants, on the ground of privilege, the announcement in the *Gazette* being an accurate transcript of a record of judgments kept and published by authority of statute. On appeal, this decision was affirmed. The Court, while neither dissenting from nor approving of the decision in *Williams v. Smith*, pointed out that this case was distinguishable from it, in that there it appeared that it was the context which made an otherwise privileged announcement actionable.

Annaly v. The Trade Auxiliary Co. has since been approved and followed in *Searles v. Scarlett*.

(1892.)
2 Q. B. 51.

²⁶ L. R. Ir.
¹¹, 394.
(1890.)

There is absolutely no privilege for the publication of statements made to editors or reporters. If an editor publishes a statement made to him or to his reporter, and if it prove untrue, it will be no defence that the editor believed it to be true, and published it exactly as it was made to him.

11 App.
Cas. 187.
(1886.)

In *Davis v. Shepstone* (*infra*, p. 188) defamatory statements published in the *Natal Witness* had been received from certain native chiefs, and had been made partly to the Bishop of Natal, and partly to a reporter sent by the *Natal Witness* to investigate the matter. At the trial there was no evidence of the truth of the charges. There was no evidence, however, that they had been published maliciously, and it was contended that in the absence of malice no action lay, as the statements were privileged. *Held*, on appeal, there was no privilege for statements so made.

HEADINGS OF REPORTS.—It is to be remembered that the heading of a report, and any observations by the reporter, are not parts of the report, but are comments upon it, and that they are not privileged but must be justified as fair comments on a matter of public interest.

3 B. & Ald.
702.
(1820.)

In the case of *Clement v. Lewis* the plaintiff brought an action against the defendant for publishing in *The Observer* a libel of and concerning the plaintiff in his profession as an attorney. The alleged libel consisted of the report of certain proceedings in bankruptcy, in the course of which the plaintiff's character was seriously impugned; the report being headed "Shameful conduct of an attorney." The defendant pleaded that the alleged libel was a fair and accurate report of the proceedings in a court of justice, and on trial the jury found for the defendant. After verdict it was held that the plea was bad, since the heading "Shameful conduct of an attorney" was no part of the proceedings in the Court.

4 L. T.
775.
(1861.)

And see *Bishop v. Latimer*.

(2.) JUSTIFICATION.

Matter *primâ facie* defamatory of the plaintiff may be either matter of fact or matter of opinion. If it be matter of fact, the defendant may justify it by proof that it is in substance and in fact true. If it be matter of opinion, he may justify it by proof that it is fair and honest comment on a matter of public interest.*

PUBLIC INTEREST.—To justify comment the first thing that must be proved is that the fact commented upon is a matter of public interest. What are matters of public interest? Speaking broadly, we may say that when any one solicits the attention or support of the public, or when any act or proceeding affects the rights or welfare of the community, that person's conduct, or that act or

* The authors are, of course, aware that it is the usual—though not the invariable practice (see *Lay v. Lawson*)—to apply the term “justification” only to proof of the truth of a statement of fact. They are also aware of the somewhat profitless controversy as to whether fair comment is a case of privilege, or of no libel, or of no defamation (see *Henwood v. Harrison*). It is submitted, however, that using the word “justify” in its ordinary sense, the above is a simple and accurate statement of the law. Justification by proof of truth, and justification by proof of fairness are practically the same. If matter *primâ facie* defamatory is published, an action founded on it must go to the jury. If it is a matter of fact, the defendant may prove it is true, and that will be an answer to the action. If it is a matter of opinion, the test of truth cannot apply. In matters of opinion the corresponding test is honesty and fairness. The defendant then may prove that the opinion published by him is fair and *bonâ fide*, and this will be an answer to the action provided the matter on which the opinion was expressed is one on which it is for the public advantage that honest opinion should be freely expressed—in other words, a matter of public interest. In this view malice makes the comment actionable, since it shews that it was not honest. The view expressed by most text writers and some judges that fair comment is not defamation at all, but becomes defamation on proof of malice, seems to the authors incomprehensible. It is submitted that whether certain matter is or is not defamatory is a question of fact, and depends to no extent on the motive of the writer. Whether it is actionable defamation without proof of malice is another point.

4 A. & E.
795.
(1836.)

L. R. 7 C.
p. 606.
(1872.)

proceeding, is a matter of public interest, and fair comment upon it will be justifiable. It seems to be for the judge to determine whether the case is one of public interest and for the jury, then to determine whether the comments are fair and *bonâ fide* (*South Hetton Coal Co. v. North Eastern News Association*).

(1894.)
1 Q. B.
133, at p.
143.

The conduct in their office of all public officials and the public conduct of other persons holding public positions, or leading a public life, are matters of public interest as affecting the welfare of the community. Under the head of public officials and persons holding public positions are included all members of parliament, members of local boards, and clergymen, at least of the Established Church.

6 M. & W.
105.
(1840.)

In *Parmiter v. Coupland* the action was for libels published by the defendant in his newspaper, the *Hampshire Advertiser*, of and concerning the plaintiff, who was mayor of Winchester. The libels imputed to the plaintiff partial and corrupt conduct and ignorance of the duties of his office. In summing up, Coleridge, J., told the jury that there was a difference with regard to censures on public and on private persons; that the character of persons acting in a public capacity was to a certain extent public property, and their conduct might be more freely commented on than that of other persons. The jury found for the defendant. On motion for a new trial, it was held that, though the verdict was wrong, there was no misdirection. Parke, B., in the course of his judgment, said: "Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he do not make his commentary a cloak for malice and slander; but any imputation of wicked or corrupt motives is unquestionably libellous."

In the same way the conduct of public affairs and the working of public institutions are matters of public interest, since nothing affects more nearly the rights and welfare of the community. Thus the foreign and

domestic policy of the Government, the proceedings of Parliament, the decisions of Courts of law, the methods of education at universities and public schools, are all subjects of fair comment.

In *Wason v. Walter*, already cited, it was held that comments on parliamentary proceedings were justified. L. R. 4 Q. B. 87. (1870.)

In *Purcell v. Souler*, it was held that the administration of the Poor Law was matter of public interest. 2 C. P. D. 218. (1877.)

In *Cox v. Feeney*, it was held that the management of a college was matter of public interest. 4 F. & F. 13. (1863.)

It often happens that the way in which private enterprises are conducted is a matter affecting the welfare of the public. If a private enterprise be conducted in such a way, for instance, as to lead to fraud, or to the injury of public morals, or to the creation of pernicious monopolies, or to the injury of the workers, it would be held beyond doubt to be a fit subject for fair comment. Whether a newspaper is conducted in a reputable way is a matter of public interest, but the extent of its circulation is not (*Latimer v. Western Morning News*).

25 L. T. 44.
(1871.)

In *Riordan v. Wilcox and Others* the plaintiff was an agent for exhibitions. In this capacity he sent out circulars to intending exhibitors at the Liverpool Exhibition, in which he described himself as an officially-appointed Exhibition agent—which was not true. In a letter to an exhibitor he said that if the exhibitor wanted a gold medal he had better confide his exhibits to him, adding that he could not write all that he could in conversation tell him. Afterwards rumours coming out that the medals at the Exhibition had been awarded unfairly, and that undue influence had been brought to bear on the jurors, the defendants' paper, the *Liverpool Evening Express*, commented severely on the scandal, and demanded an investigation into "the notorious proceedings of Mr. T. Vincent Riordan," and referred to "his nefarious behaviour." Huddleston, B., left it to the jury whether the matter was

4 T. L. R. 475.
(1888.)

one of public interest, and secondly, whether the comments were fair and *bonâ fide*. If they decided both questions in the affirmative, their verdict should be for the defendants. The jury found for the defendants.

And see *South Hetton Coal Co. v. North Eastern News Association*, *supra*, p. 132.

It has already been said that when a person himself solicits the attention or support of the public his conduct in doing so is matter of public interest. Examples of soliciting the attention of the public are numerous: publishing a book, exhibiting a picture, performing or producing a play or piece of music at a theatre or concert, advertising the merits of one's wares, may be instanced as cases where the person concerned has, by soliciting the attention of the public, given the public and the press a right to criticise and comment upon his work.

4 F. & F.
983.
(1866.) In *Hunter v. Sharpe* the plaintiff, a medical practitioner, advertised that he was in possession of a specific remedy for a disease hitherto considered incurable—consumption. *Held*, that this was a matter of public interest, and fair and proper subject for public comment.

4 F. & F.
1107.
(1866.) In *Strauss v. Francis* plaintiff published a book, which was denounced in the *Athenæum*. *Held*, that the book was fair subject of comment. Cockburn, C.J., in addressing the jury, said: "A man who publishes a book challenges criticism; he rejoices in it if it tends to his praise, and if it is likely to lead to increase the circulation of his work; and therefore he must submit to it if it be adverse, so long as it is not prompted by malice, or characterized by such reckless disregard of fairness as indicates malice towards the author."

FAIR COMMENT.—The second thing the defendant must prove is that the comment is fair and *bonâ fide*. "Fair comment" will be found to be a much more difficult matter to decide upon than "public interest,"

for it is, necessarily, largely a matter of opinion, and in determining it the jury must have regard to many circumstances. Of these, the most important is the state of the defendant's own mind. If it be suspected that he was actuated by ill-feeling in his criticism, or that he did not state his honest opinion, the jury will be inclined to hold that his comments were not fair or honest. If, however, there be no suspicion of ill-feeling, and if he did state his honest opinion, it matters little how severe was the comment.

Two definitions of "fair comment" may be cited. The first ^{20 Q. B. D.} is that given by Lord Esher, M.R., in *Merivale v. Carson*: ^{p. 280.} "What," his lordship says, "is the meaning of a 'fair comment'?" I think the meaning is this: Is the article in the opinion of the jury beyond that which any fair man, however prejudiced or however strong his opinion may be, would say of the work in question? Every latitude must be given to opinion and to prejudice, and then an ordinary set of men, with ordinary judgment, must say whether any fair man would have made such a comment on the work. It is very easy to say what would be clearly beyond that limit; if, for instance, the writer attacked the private character of the author. But it is much more difficult to say what is within the limit. That must depend upon the circumstances of the particular case." ^(1887.)

The second is that given by Lord Tenterden, C.J., in *Macleod v. Wakley*, and quoted with approval by Bowen, L.J., ^{3 C. & P.} in the last-mentioned case: "Whatever is fair, and can be ^{p. 313.} reasonably said of the works of authors or of themselves, as connected with their works, is not actionable, unless it appears that, under pretext of criticizing the works, the defendant takes an opportunity of attacking the character of the author; then it will be libel." ^(1828.)

MIXED COMMENT AND ALLEGATIONS OF FACT.—It seldom happens, however, that comments on matters of public interest are simply comments. Almost invariably they are mixed up more or less with allegations of fact.

The commentator, not content with expressing his opinion of the act or conduct in question, proceeds to suggest motives and make charges. With regard to this one or two rules may be laid down.

In the first place the character of the act, conduct, or work commented upon or criticized must not be misrepresented.

20 Q. B. D. In *Merivale v. Carson* the plaintiff had, in collaboration
275.
(1888.) with his wife, written and produced a play, called "The Whip Hand." In this play the wife of one of the characters was a gambler, who, in order to meet her losses at play, had been compelled to borrow money, and so put herself in the power of an adventurer. No criminality was suggested. The defendant was the editor of a theatrical paper called the *Stage*. On the production of the plaintiff's play a criticism of it appeared in the *Stage*. The part of it to which most exception was taken was as follows: "'The Whip Hand,' the joint production of Mr. and Mrs. Herman Merivale, gives us nothing but a hash-up of ingredients which have been used *ad nauseam*, until one rises in protestation against the loving, confiding, fatuous husband with the naughty wife and her double existence, the good male genius, the limp aristocrat, and the villainous foreigner." The innuendo was that the article implied that the play was of an immoral tendency. There was no allegation of malice. Jury found for the plaintiff, damages one shilling. On appeal by the defendant, the Court held that, as "naughty wife" might reasonably be held to mean adulterous wife, and as the jury had found it actually meant that, the verdict must stand.

In the next place, corrupt or improper motives for the act or conduct should not be alleged unless they be fairly deducible from the act or conduct. If such motives are alleged without such reasonable suggestion, it will be no defence that the writer honestly believed on extrinsic grounds that they were the plaintiff's real motives; he

will have to prove that they were actually the real motives, or he will be liable in damages.

In *Campbell v. Spottiswoode* the defendant was publisher of ^{3 B. & S.} the *Saturday Review*. The plaintiff, a Dissenting clergyman, ^{769.} was the editor and proprietor of a religious newspaper called (1863.) the *British Ensign*. The *British Ensign* proposed to publish a series of letters addressed to eminent persons upon the subject of evangelizing the Chinese, and asked that sympathizers should promote the circulation of the paper in order to call the attention of missionaries and others to the importance of the work. Afterwards lists of subscribers for copies were published, one of which was as follows: "The Hon. Mrs. Thompson, 5000 copies; An Old Soldier, 100; R. G., 240," etc. The *Saturday Review* criticized this proceeding, and insinuated that the motive of it was to promote the circulation of the paper rather than to convert the Chinese. The jury found damages £50, and specially that the defendant honestly believed the imputations to be true. *Held*, on appeal, that though *bonâ fide* belief in imputations might be a ground for mitigation of damages, yet it constituted no defence. Cockburn, C.J., however, said: "I think the fair position in which the law may be settled is this: that where the public conduct of a public man is open to animadversion, and the writer who is commenting upon it makes imputations on his motives which arise fairly and legitimately out of his conduct, so that the jury shall say that the criticism was not only honest, but also well founded, an action is not maintainable. But it is not because a public writer fancies that the conduct of a public man is open to the suspicion of dishonesty, he is therefore justified in assailing his character as dishonest."

The statement of fact on which the comments are based must themselves be reasonably accurate, more especially if the comments upon them contain a reiteration and restatement of them. But if reasonably accurate, the occurrence of a trivial inaccuracy will not take away protection. In the words of Cockburn, C.J.,

4 F. & F.
219.
(1865.) in *Woodgate v. Ridout*, "it is not to be expected that a public journalist will always be infallible."

2 T. L. R.
435.
(1886.) In *Bryce v. Rusden* the defendant, in a history of New Zealand, stated that the plaintiff, when a lieutenant in the Kai Jwi cavalry, had slaughtered some native women and children; that he had dismissed a subordinate officer who had protested against his cruelty, and that he had ever afterwards been known amongst the natives as the "kohurn," or murderer. It was not contended by the defendant that these allegations appeared in any other history of New Zealand, or in the official reports; but he alleged that he heard of them among the natives, and he called a witness who, on hearing evidence, had made a statement to the Governor of New Zealand, containing substantially the same charges. A copy of this statement had been forwarded by the Governor to the defendant. Huddleston, B., held, that the *bonâ fide* belief, without malice, of the defendant that the charges were true, was no defence. The jury found for the plaintiff, damages £5000.

4 T. L. R.
467.
(1888.) In *Peters v. Bradlaugh* the defendant, in a letter to the *Times*, had announced that he could prove that the plaintiff had received a cheque from Lord Salisbury for the purpose of defraying the expenses of summoning a meeting in Trafalgar Square, with the object of denouncing the system of sugar bounties, and that that was the meeting which, in the previous year, had ended in rioting and pillaging. This letter was published in connection with the suppression of public meetings in Trafalgar Square by Lord Salisbury's Government. At trial it was proved that, though Lord Salisbury had given a cheque to the plaintiff about the time of the disorderly meeting, it had been given for a quite different purpose. It was not alleged that the defendant did not *bonâ fide* believe that his statement was true. The jury found for the plaintiff, damages £300.

11 App.
Cas. 187.
(1886.) In *Davis v. Shepstone* the original defendants, Davis & Son, published in the *Natal Witness* an article commenting on the plaintiff's appointment as Resident Commissioner in Zululand, in the course of which it was alleged that he had been guilty of gross assaults upon certain native chiefs. The plaintiff sued for libel, and the defendants pleaded *inter alia* that the article

was fair comment on a matter of public interest. No evidence was forthcoming at the trial of the truth of the charges of assault. The jury found for the plaintiff. The defendants appealed on the ground that the article was fair comment on a matter of public interest, and that therefore, in the absence of evidence of malice the case should not have gone to the jury. The appeal was dismissed. Lord Herschell, L.C., in delivering the judgment of the Privy Council, said: "The distinction cannot be too clearly borne in mind between comments or criticism and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used. It is one thing to comment upon or criticize, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct."

Lastly, the comments should be confined to the conduct or act which is matter of public interest. In other words, the conduct or act should not be made the pretext for dragging in a general discussion of the plaintiff's acts or conduct in matters with which the public have no concern, or for throwing reflections on his character not arising out of the conduct properly discussed.

In *Weldon v. Johnston* the plaintiff had several disputes with the French composer, M. Gounod, which resulted in the latter applying to a police magistrate for a summons against the plaintiff. The defendant, who was London correspondent of the Paris *Figaro*, commenting upon this made a series of statements regarding the relations between the plaintiff and M. Gounod. Held, that the fact that M. Gounod had applied for a summons against the plaintiff was not sufficient to make their private relations a matter of public interest. *Times*,
27th May,
1884.

Occasionally, however, the private character of a person may be a matter of fair comment.

Thus in *Seymour v. Butterworth* the plaintiff, who was a Q.C. and also a Member of Parliament, was appointed a Recorder. 3 F. & F.
372.
(1862.)

At the time this latter appointment took place an investigation into his private conduct before the Benchers of his Inn was pending, which resulted in a censure being passed upon him. After his appointment, he, in a speech to his constituents, referred to this censure, and denounced the Benchers for unfairness. The *Law Review*, commenting on this, discussed the judgment of the Benchers. *Held*, that plaintiff's private character was matter of fair comment. Cockburn, C.J., in his summing up, said: "Mr. Seymour was not merely a member of the Bar; he was not only a member of Parliament; he was actually one of the judges of the land. . . . Mr. Seymour held a position in which integrity, honesty, and honour were essential; and if in his private conduct he shewed himself destitute and devoid of those essential qualities, surely it could not be said that it was not a fair matter for public animadversion, so long as the writer keeps within the bounds of truth and the limits of just criticism."

The burden of proving that comments are fair and *bonâ fide* rests upon the defendant. It would seem, however, that in certain cases the comment may be on the face of it so fair that the Court may refuse to let the case go to the jury (*per* Collins, L.J., in *Fox v. Evening News*); but such would hardly be the case save where the comment was so mild as to be, on the face of it, incapable of a defamatory meaning. It would seem to follow from *Kimber v. The Press Association*, that on the evidence given by the plaintiff himself, the judge may hold that certain comments are so obviously fair that there is no case to go to the jury.

14 T. L. R.
280.
(1898.)

Supra,
p. 166.

ALLEGATIONS OF FACT.—Where the matter *primâ facie* defamatory of the plaintiff is an allegation of fact, the defendant may answer an action founded on it by proving that the alleged fact is true. The truth proved must be the truth of the substance of the allegation. Thus,

if the matter complained of was a statement to the effect that a rumour defamatory to the plaintiff was current in the city, the truth to be proved would not be that in fact such a rumour was current, but that in fact the rumour was well-founded (*De Crespigny v. Wellesley*).^{5 Bing. 392.} Proving the truth of a statement of fact is what is (1829.) technically known as justifying the libel, but in this work the word "justification" is extended to include fair comment.

The object of the civil law is to preserve to every man what properly belongs to him—among other things his reputation. The reputation properly belonging to a man cannot, however, be taken from him or injured by publishing the truth about him. Accordingly, to every action for injury to reputation it is a complete answer to prove that the defamatory statement is true. This is what is called "justifying the libel."

The ground on which justification is based is clearly^{10 B. & C. 272.} stated by Littledale, J., in *McPherson v. Daniels*. "The (1829) truth is an answer to the action . . . because it shews that the plaintiff is not entitled to recover damages; for the law will not permit a man to recover damages in respect of an injury to a character which he either does not or ought not to possess."

Privilege is a defence independently of the truth or falsehood of the libel. Justification is a defence only when the libel is true, or is a fair and honest comment on the truth, and when it can be proved to be true—sometimes a very different thing. Privilege and justification, however, are not inconsistent defences; they may both be pleaded for the whole libel, as, for instance, that the libel is true in substance and in fact, and if not true, that it is privileged; or, the one may be pleaded

for one part of a libel, and the other for the rest, provided the libel consists of two or more separable statements. Where, however, privilege affords a complete defence, it is unwise to attempt to justify.

SEPARABLE LIBELS.—Where the libel consists of separable statements, not merely may some of the statements be justified and privilege pleaded for the others, but some may be justified, and the others denied to be libellous or admitted to be libellous, and money paid into court in respect of them. Unless, however, it is made very clear what is justified and what is not justified, the Court will be inclined to regard the defence

23 Q. B. D. as embarrassing (*Fleming v. Dollar*).
388.

(1889.)

6 Bing.

266, 587.

(1830.)

At p. 593.

In *Clarkson v. Lawson* the libel consisted in a statement published by the defendant that the plaintiff, a proctor, had been three times suspended from the practice of his profession, once by Lord Stowell, and twice by Sir J. Nicholl. In reply, the defendant pleaded in justification that the plaintiff was once suspended by Sir J. Nicholl. On demurrer this was held a bad plea. Afterwards the case came before the Court in another form, when the defendant pleaded in justification of that part of the libel which stated that the plaintiff had been suspended by Sir John Nicholl, that the plaintiff had been so suspended. On demurrer it was argued that the charge made against the plaintiff was not severable, and must be justified altogether, or not at all. The Court held, however, that the charge was severable and the plea good. Tindal, C.J., in his judgment, said: "I agree that when the charge complained of is not severable in its nature, the defendant must justify to the full extent of the charge. Upon a charge of murder, for instance, it would be no plea to allege that manslaughter had been committed, because such a plea would not confess what was imputed or any part of it. But here, when the defendant says that the plaintiff was suspended three times, it is no more than saying he was suspended once on such a day, once on such

another day, and once on a third day; and there can be no doubt he may confine his justification to one of the days, leaving the plaintiff to establish the damage resulting from the residue of the charge."

In the same way when the libel contains several distinct and separate charges, the plaintiff can bring an action on one or more of these, in which case a reply justifying those charges not proceeded upon will not be admitted in justification of the libel.

In *Bembridge v. Latimer* the defendant published in the *Western Times* an article accusing the plaintiff, who was a solicitor, of gross ingratitude towards a former client, and also called him a "convicted briber." The plaintiff brought an action for libel, and in his declaration (*i.e.* statement of claim) set out the charge of ingratitude. The defendant in his reply set out a distinct act of bribery against the plaintiff; and, further, set out the whole article from the *Western Times*, in which, after the plaintiff's name, appeared the words "the convicted briber." The plea alleged that the words omitted from the declaration altered the meaning of the article in an unfair manner, and alleged that the true meaning of the article was that the plaintiff had been guilty of bribery *and* ingratitude. *Held*, that the plea must be struck out as embarrassing. ^{10 L. T. Rep. 816. (1864.)}

To attempt, however, to bring an action on the minor charges in a libel, while passing over in silence the more serious or shameful ones, is not very wise policy. If the more serious charges are true, it is better to let the whole libel pass unnoticed. (See *Cooke v. Hughes*, p. 135.)

PROOF REQUIRED.—When the defamatory matter is a specific charge or several specific charges against the plaintiff, the defendant on a plea of justification must prove that very charge or each of those very charges in every material detail. The rule is that the charges must

be set out in the plea and proved by the evidence with the same particularity and conclusiveness as if the plaintiff were being indicted and tried for them. And there can be no partial justification of them by proof that though the plaintiff did not do the precise thing alleged in the libel he did do something very like it. The evidence must prove the charge to be entirely true, or there is no justification.

11 L. T.
543.
(1864.)

In *Blake v. Stevens* the defendants published a law book in which a case was cited as to the liability of solicitors. In setting out the facts, the author by mistake had said the solicitor in the case cited had been struck off the rolls. As a fact he had been merely suspended for some time from practice. The solicitor in question sued the defendants for libel. *Held*, that proof of the suspension was no justification.

When the charge is a general one imputing that the plaintiff is in the habit of doing certain things, the fact that he on one occasion did the thing referred to will not justify the libel. Several specific instances of his having done the act alleged must be proved in order to sustain the general charge, and each specific instance must be proved as particularly and as conclusively as if it were specifically charged in the libel.

14 Cox,
C. C. 419.
(1880.)

In *Regina on the prosecution of Lambri v. Labouchere* the libel consisted in a charge against the prosecutor, Lambri, published in the defendant's paper, *Truth*. The charge was to the effect that Lambri was "one of a gang of card-sharpers." On a plea of justification it was proved that in two cases the prosecutor with a confederate swindled certain persons at cards. It was also proved that he had entered into a confederacy with other persons to play and win money by swindling, and that he had assumed the title of Pasha with the intention of getting admission to clubs and private houses for this purpose. *Held*, on these findings, that the plea was satisfied. Cockburn, C.J., in his summing-up, said that it was sufficient if the plea was

proved in substance. Where the libel consisted of a number of specific charges all of them required to be proved; but here it was different, for the libel was general, and it was sufficient to prove so much of the plea as would justify the libel.

In *Willmet v. Harmer* the action was on account of an article published by the defendant, in which the plaintiff, who had been arrested on a charge of bigamy, was described as having been guilty of the offence of marrying a great number of wives—"three having appeared in Court, and a great many others being kept in reserve." It was proved at trial that the plaintiff had married two women, and that at the time of his arrest he was living with a third (Rachel Lamb) whom he described as his wife. In summing-up Lord Denman said: "The first plea of the defendant's is a plea of justification of so much of the libel as imputes the crime of bigamy to the plaintiff; and I think that on this plea of justification you should have the same strictness of proof as on a trial for bigamy. The second plea justifies the imputation of polygamy. . . . If, by the word polygamy, it is meant that the plaintiff had married three wives as distinct from the charge of the crime of bigamy, I think the plea is proved, because in that view the evidence of the reputation and cohabitation as to Rachel Lamb would be receivable as evidence of the plaintiff's marriage with her." Verdict on both issues for defendant. 8 Car. & P.
895.
(1839.)

In *Leyman v. Latimer and Others* the plaintiff was editor and proprietor of the *Dartmouth Advertiser*, and the defendants proprietors of the *Western Daily Mercury*. On 24th April, 1876, the defendants published that "the plaintiff was a convicted felon." On 1st May, 1876, the defendants' newspaper referred to the *Dartmouth Advertiser* and its "bankrupt and felon editors." On action the defendants denied that "bankrupt editor" referred to the plaintiff, and justified the reference to the plaintiff as a convicted felon, and felon editor by pleading that the plaintiff had been convicted and imprisoned for twelve months for stealing feathers. At trial before Blackburn, J., without a jury, a verdict was entered for the defendants on the ground that the libel was true. On motion for a new trial the Court entered judgment for the plaintiff on the demurrers as to justification, and ordered a new trial to assess damages. On appeal this judgment was affirmed. Bramwell, L.J., held that 3 Ex. D.
15, 352.
(1878.)

while the expression "convicted felon" had been justified by proving the conviction for felony of the plaintiff, the expression "felon editor" had not been justified, as the conviction of a person for felony was not technical proof that he was a felon, *i.e.* had committed felony. Brett and Cotton, L.JJ., held that the term felon editor could not be justified by proving a previous conviction, on the ground that a person who has suffered the punishment fixed for a crime has purged himself of the crime, and is no longer a felon.

4 Ex. 511.
(1844.)

In *Wakley v. Cooke and Healey* the defendants had described the plaintiff as a "libellous journalist." In an action of libel founded on this the defendants justified. At the trial the only evidence of the truth of the description was to the effect that the plaintiff had on one occasion been successfully sued for libel. *Held*, that this was no justification of the general charge implied in the description.

INUENDO.—Where the plaintiff has assigned a meaning to a libel by what is called an innuendo, the defendant in justifying the libel is not bound to justify that meaning. He may deny that the meaning assigned to the libel by the plaintiff is its real meaning, and justify the libel as he published it. Of course, it is then for the jury to say what the real meaning is, and whether the defendant has justified it.

Times, 9th
May, 1890.

In *O'Brien v. Salisbury* the action was brought on account of certain expressions used by the defendant, the Marquis of Salisbury, in a speech delivered by him at a public meeting at Watford. The expressions complained of were as follows: "Mr. O'Brien, in language not so crude as I have used, but perfectly distinct, urged upon all those who heard him that men who took unlet farms should be treated as they had been treated during the last ten years in the locality in which he spoke—that is to say, that they should be murdered, robbed, their cattle shot and ill treated, their farms devastated." In his statement of claim the plaintiff citing this added that it implied that the plaintiff had in the speech commented upon incited those present to commit those offences. The defendant

denied this innuendo, and pleaded that the statement was true in substance and in fact, and that it was *bonâ fide* comment on matter of public interest. The jury found for the defendant. A new trial was applied for on the ground *inter alia* that the verdict was against the weight of evidence. The application was refused by the Divisional Court, whose decision was afterwards affirmed by the Court of Appeal.

CHAPTER III.

SLANDER OF PROPERTY.

Supra,
p. 130.

SLANDER of property is not strictly speaking defamation at all, since it in no way affects the personal character of the owner of the property slandered. It is, however, so closely related to defamation that often the question whether the evidence establishes defamation of the owner or merely slander of his property is one of great difficulty, and the line of distinction very faint (*Australian Newspaper Co. v. Bennett; Russell v. Webster*). Yet, as the rules applicable to defamation and to slander of property are very different, whether or not an actionable wrong has been done depends not infrequently upon that distinction. It is therefore desirable that the two subjects should be dealt with together.

WHAT IS SLANDER OF PROPERTY.—Slander of property is usually divided into slander of title, and slander of goods. It is submitted, however, that this distinction is based on no real difference. The principle applicable in all cases of this kind is the same. The publication of a statement of and concerning the property or trade of another, which is false and which is calculated to cause damage, renders the person publishing it liable to an action for any damage actually resulting from it. The

statement may take the form of impugning the plaintiff's title to his property (when it is called slander of title), or of disparaging the quality of his goods (when it is usually called slander of goods), or of misrepresenting the nature or extent of his business (when it is sometimes called trade libel). Whatever form it takes, however, the principle above stated applies (cf. remarks of Bowen, L.J., (1892.) 2 Q. B. 524, at p. 527. in *Ratcliffe v. Evans*).

The first point to be noted in this principle is that the statement must be published of and concerning the property or trade of the plaintiff (per Lord Watson, *White v. Mellin*). In this respect slander of property resembles ordinary defamation. Before an action lies, the plaintiff must shew that the statement complained of referred specifically to his property or trade. A general statement, such as that all who held lands confiscated from the Church had no lawful title to such property, would not constitute slander of the title of any particular person holding such property; nor would a general statement, that all intoxicating liquors were poisonous, constitute slander of the goods of any particular brewer or publican; though such statements might, if repeated sufficiently often and vehemently, injure the property in question in some neighbourhoods. More important practically is the fact the mere puffing by a tradesman of his own goods is no slander of goods of the same kind manufactured or sold by others (*Evans v. Harlow*). It is not sufficient to constitute slander of goods to say, "My goods are better than any others in the market," or even, it would seem, "My goods are better than your goods." It would appear that, to found an action, there must be, not merely relative, but absolute disparagement of the plaintiff's goods. (1895.) A. C. 154, at p. 167. 5 Q. B. 624. (1844.)

- In *White v. Mellin* the appellant was a chemist, and the respondent was the proprietor of Mellin's food for infants. The appellant retailed Mellin's food, and he was accustomed to place on bottles of it sold by him a label, with a notice that "Vance's food for infants and invalids is far more nutritious and healthful than any other preparation yet offered." The respondent applied for an injunction to restrain the practice, and he produced evidence to shew that the statement on the label was not true. Romer, J., refused the injunction without calling on the appellant, holding that the label was not a disparagement of the respondent's food, but a puff of Vance's. The respondent appealed. The Court of Appeal allowed the appeal. The appellant then appealed to the House of Lords. Their lordships restored the order of Romer, J. Lord Herschell, L.C., in delivering judgment, said: "I cannot help saying that I entertain very grave doubts whether any action could be maintained for an alleged disparagement of another's goods, merely on the allegation that the goods sold by the party who is alleged to have disparaged his competitor's goods are better, either generally or in this or that particular respect, than his competitor's are. . . . It is impossible not to see . . . that a very wide door indeed would be opened to litigation, and that the Courts might be constantly employed in trying the relative merits of rival productions, if an action of this kind were allowed."
- (1894.)
3 Ch. 276.
- (1895.)
A. C. 154,
at p. 164.
- L. R. 9 Ex. 218.
(1874.) See also *Western Counties Manure Co. v. Lawes Chemical Manure Co.*

- The second point to be noted is that the statement must in fact be false. If it is not false no action lies. And the burden of proving that it is false lies upon the plaintiff (*Burnett v. Tak*; *Anderson v. Liebig's Extract of Meat Co.*; *White v. Mellin*).
- 45 L. T. 743, 757.
(1882.)
(1895.)
A. C. 154.
- The third point is, that the false statement must be calculated to cause damage to the plaintiff's property or trade (per Bowen, L.J., in *Ratcliffe v. Evans*). If the false statement was not calculated to damage the plaintiff's property or trade, the circumstance that such damage
- Supra*, at
p. 527.

did in fact result will not make it actionable. The general rule applicable to torts to property applies, and as the damage is not a natural result of the act, the person who did the act cannot be held liable for it (*Ajello v. Worsley*).

(1898.)
1 Ch. 274.

MALICE.—Sometimes it is said that a fourth condition must be fulfilled in order to render slander of property actionable, namely, that the slander must be malicious or not *bonâ fide*. There are many *dicta* in the older cases to this effect (see *Pater v. Baker*; *Brook v. Rawl*).^{3 C. B., at p. 831. (1847.)} In these cases, however—which were almost always cases of slander of title—there was such an interest claimed or vested in the person publishing the slander as would in the case of ordinary defamation make the publication a privileged one, and therefore not actionable without proof of malice. In the later cases the judges have shewn a strong disposition to avoid declaring that malice is necessary where no such interest exists. They have used such phrases as “without lawful occasion” (*Western Counties Manure Co. v. Lawes Chemical Manure Co.*);^{L. R. 9 Ex. at p. 222. (1874.)} “without just occasion or excuse” (*Ratcliffe v. Evans*);^(1892.) “without reasonable and probable cause” (*Halsey v. Brotherhood*).^{2 Q. B. at p. 527, 19 Ch. D. at p. 389. (1881.)} These expressions seem more consonant with there being no need of any further malice than that always presumed in the case of libel than with the need of what is called express malice. The point is of the greatest importance to newspapers. Slander of property, when it occurs in the columns of a newspaper, usually appears in the form of an advertisement. If express malice be necessary to give a good cause of action, no action, as a rule, could be maintained against the newspaper; but if malice is not necessary, an action would invariably lie.

33 J. P.
299.
(1869.) An example of slander of title in an advertisement occurred in the case of *Ravenhill v. Upcott*; but, unhappily, the point that express malice was necessary to maintain the action, appears not to have been taken.

See *infra*,
p. 216. In that case the action was brought against the proprietor of the *Wolverhampton Chronicle* for an advertisement published by it in the ordinary course of business. The plaintiff was in possession of certain land which he had advertised for sale, and while the sale was still pending the advertisement appeared. It was as follows: "Important Notice. Horsehill Estate. The public are respectfully requested not to buy any property formerly belonging to A. B. & C., without ascertaining that the title-deeds of the same are correct; as the heirs are not dead nor abroad, but are still alive." In consequence of this publication the estate became practically unsalable. The plaintiff, on seeing it, wrote complaining, and requesting the advertiser's name, which the defendant immediately forwarded. Nevertheless, the plaintiff brought his action, not against the advertiser, but against the defendant. After action brought the defendant inserted an apology in his newspaper, and paid £60 into Court. In defence he pleaded this apology and payment. The plaintiff joined issue. The judge held that the apology not being inserted before action, though the defendant's attention had before action been drawn to the libel, it could not be pleaded under sect. 2 of Lord Campbell's Act; and the jury found a verdict for the plaintiff.

3 Bing.
N. C. 371,
at p. 384.
(1836.) ACTUAL DAMAGE.—The action lies only for the actual damage sustained (per Tindal, C.J., in *Malachy v. Soper*). Accordingly, that any action for damages may lie, there must be actual damage, and as this fact, like the falseness of the statement, is a material part of the cause of action, the burden of proving it lies on the plaintiff.

Supra. In *Malachy v. Soper* the plaintiff was possessed of shares in a silver mine in Cornwall to the value of one hundred thousand pounds sterling. Certain persons had filed bills in

Chancery claiming these shares, and praying that a receiver should be appointed. To these bills the plaintiff demurred. While the demurrers were still pending, the defendants published in their newspaper an announcement to the effect that they had been overruled, that a receiver had been appointed according to the prayers of the petitions, and that persons duly authorized had arrived at the mine. The plaintiff thereupon brought an action for slander of his title to the shares. At trial the jury found for the plaintiff. On motion to arrest judgment the Court held that as no special damage had been alleged by the plaintiff to have resulted from the slander, the judgment must be arrested. Tindal, C.J., in delivering judgment, said: "We hold . . . that an action for slander of title is not properly an action for words spoken, or for libel written and published, but an action on the case for special damage sustained by reason of the speaking or publication of the slander of the plaintiff's title."

It may be taken now as settled that an action for an injunction to restrain further publication of the false statement cannot be maintained without proof of actual damage. In *Mellin v. White*, which was an action for an injunction, Lindley, L.J., said: "If . . . the statement complained of . . . is a false statement about the plaintiff's goods to the disparagement of them, and if that statement has caused injury to, or is calculated to injure the plaintiff, this action will lie." The decision in *Mellin v. White* (reported as *White v. Mellin*) was reversed in the House of Lords primarily on the point that the advertisement here in question was not a disparagement of the plaintiff's goods, but merely a puff of the defendant's. But among the other points discussed was whether actual damage was necessary to sustain an action for an injunction. All the learned lords who expressed an opinion on the point seemed to be agreed that there was no difference between an action for

(1894.)
3 Ch. 276,
at p. 280.

(1895.)
A. C. 154.

damages and an action for an injunction, though, at the same time, some phrases used appeared to indicate that even if no damage had been actually sustained at the time of action brought, an injunction might, nevertheless, be granted if it could be shewn that damage inevitably must be sustained from the false statement (*per* Lord Watson, at p. 167). The point, however, is of little importance, since it would be practically impossible to prove that any false statement as to property or trade must inevitably cause damage.

Cf. *Halsey v. Brotherhood*.

15 Ch. D.
514.

19 Ch. D.
386.

(1881.)

PROOF OF DAMAGE.—To prove special damage sufficient to support an action for slander of property it is necessary to prove actual loss resulting directly from the slander. Thus, if in consequence of the slander, land (*Malachy v. Soper*) or shares (*Ravehill v. Upcott*) became unsalable, that would suffice. And in the case of trade libels, proof that in consequence of the slander there had been a general falling off in the business would be enough without proof that any particular customers had, in consequence of the slander, ceased to deal with the plaintiff (*Ratcliffe v. Evans*).

Supra.

(1892.)
2 Q. B. 524.

CHAPTER IV.

CIVIL PROCEDURE.

FOR a libel coming within the conditions laid down in the preceding chapters there are, at Civil Law, two remedies. In every case the person libelled has an action for damages, and sometimes he may, in addition, obtain an injunction to restrain further publication of the libel.

It does not enter into the design of this book to give a detailed account of the proceedings in an action for libel; but it is necessary to call attention to one or two points which are of special importance in the case of actions against newspapers.

JURISDICTION.—Speaking generally, all actions for libel must be brought in the High Court of Justice. County courts have no original jurisdiction save by consent of both plaintiff and defendant. An action for libel, however, begun in the High Court may sometimes be remitted to the county court for trial under sect. 66 of the County Courts Act, 1888, which runs ^{51 & 52} as follows:—
Vict. c. 43.

It shall be lawful for any person against whom an action of tort is brought in the High Court to make an affidavit that the plaintiff has no visible means of paying the costs of

the defendant should the verdict be not found for the plaintiff; and thereupon a judge of the High Court shall have power to make an order that, unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the Supreme Court, or satisfy a judge of the High Court that he has a cause of action fit to be prosecuted in the High Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy a judge as aforesaid, that the action be remitted for trial before a Court to be named in the order, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such Court, who shall appoint a day for the hearing of the action, notice whereof shall be sent by post or otherwise by the registrar to both parties or their solicitors; and the action and all proceedings therein shall be tried and taken in such Court as if the action had originally been commenced therein; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the High Court shall be allowed according to the scale of costs for the time being in use in the county courts, and the costs of the order and all proceedings previously thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.

It will be observed that before a case can be remitted under this section three conditions must be fulfilled—(1) the defendant must prove that the plaintiff has no visible means to pay costs if the verdict goes against him; (2) the plaintiff must fail to shew that the case is one fit to be tried in the High Court; and (3) the plaintiff must fail or refuse to give such security for costs as the Court orders.

As to the first of these, it has been held that "visible means" here does not mean "tangible means," but such means as could be fairly ascertained by a reasonable person in the position of the defendant (*Lea v. Parker*).

The second condition is that the plaintiff shall fail to shew a cause of action fit to be tried in the High Court. By fit here is meant more fit to be tried in the High Court than in a county court: per Denman, J., in *Farrer v. Lowe & Medley*. The tendency of the Court is to *Infra.* regard all libel actions, save when the libel complained of is trivial in character, as possessing this superior fitness. Two cases may be cited.

In *Farrer v. Lowe & Medley* the plaintiff was a commercial traveller. The defendants, Lowe & Co., were merchants, in whose employ the plaintiff had been, and Medley, another commercial traveller, in the employ of Lowe & Co. The libel consisted in an accusation brought against the plaintiff of embezzling the money of the defendants, Lowe & Co., while in their employ. The defence of Lowe & Co. was justification; of Medley, no publication, privilege, and justification. The master had made an order to remit, against which the plaintiff appealed. The Divisional Court held that the cause was one fit to be tried in the High Court, and quashed the master's order. 5 T. L. R. 234. (1889.)

Critchley v. Brown was an action for slander brought by a labourer's wife against another labourer. The alleged slander consisted of an imputation on the chastity of the plaintiff. The defendant denied publication, and pleaded privilege. Order to remit refused. 2 T. L. R. 238. (1885.)

CONSOLIDATION OF ACTIONS.—As has already been pointed out, when a libel has been published in a newspaper, the proprietor, the printer, the publisher, the vendor, and every other person consciously engaged in circulating the libel, may be held severally responsible for it. Against each of these an action lies, and it is no defence in an action against one of them that damages have already been recovered or compensation accepted from some other of them; though now, by sect. 6 of the Law of Libel Amendment Act, 1888, evidence of such a See p. 226, *infra.*

fact may be given in mitigation of damages. Similarly, when a libel has appeared or has been repeated in several newspapers, each appearance or repetition constitutes a new publication of the libel, for which separate actions will lie against the proprietor, printer, etc., of each newspaper. Thus, if a news agency sends out an item of news to a hundred different newspapers, and the statements contained in it prove to be unfounded and libellous, it may happen that the person libelled has rights of action against five or six hundred different persons. As this power was greatly abused by plaintiffs (see *Colledge v. Pike*), a very necessary provision for the consolidation of such actions was introduced by the Law of Libel Amendment Act, 1888, which provides (sect. 5), that—

56 L. T.
124.
(1886.)

51 & 52
Vict. c. 64.

It shall be competent for a judge or the Court upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel, shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

In a consolidated action under this section the jury shall assess the whole amount of the damages (if any) in one sum: but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the

apportionment of such costs between and against such defendants.

Under this section the Court may order consolidation before all or any of the defendants have delivered their defences (*Stone v. Press Association*), or if they have delivered them, even though the defences set up are different (*Eddison v. Dalziel*).

(1897.)
2 Q. B. 159.
9 T. L. R.
334.
(1893.)

POINTS WHICH MUST BE DISCLOSED.

PARTICULARS.—If the defence set up be one of justification or privilege, such defence must be specially pleaded, and all the material facts relied upon by the defendant must be set out in his particulars.

R. S. C.,
1883,
Ord. XIX.,
r. 15.
51 L. J.
Q. B. 359.
(1882.)

In *Belt v. Lawes* the action was for a libel published of the plaintiff in his profession and calling as a sculptor. In the statement of claim the plaintiff alleged that defendant “falsely and maliciously wrote and published” the said letter. The defendant in his reply admitted that he sent out the letter in question, but denied that he “wrote or published the same falsely or maliciously as alleged.” At Chambers, Kay, J., struck out the words “denies that he wrote or published the same falsely or maliciously as alleged.” The defendant appealed. *Held*, that the words were properly struck out of the defence on the ground that under them the defendant might set up a defence of justification or privilege without giving plaintiff notice of the defence he should have to meet.

In *Hennessy v. Wright* (No. 2) the plaintiff, Sir John Pope Hennessy, brought an action against the *Times* for a libel contained in a letter from Mauritius. The correspondent had alleged that Sir John, who was governor of Mauritius, had been charged by members of his council with sending to the Colonial Office garbled reports of their speeches, and it was alleged by the plaintiff that the correspondent imputed that he did in fact send such garbled reports. In defence the *Times* pleaded that the alleged libels were true in substance and in

24 Q. B. D.
445 note.
(1888.)

fact. *Held*, that Sir John was entitled to further and better particulars, it not being clear whether the defence meant that what was charged against the plaintiff had been truly reported, or that what was reported to have been charged was true.

(1891.) In *Devereux v. Clarke & Co.* the libel was contained in a
2 Q. B. 582. review of the plaintiff's book, and consisted in a statement that the author of the book was "by his own confession a most bare-faced liar." The defendant did not plead fair comment, but justified. *Held*, that he was bound to point out the passages in the plaintiff's book on which he relied for proof of the truth of the libel.

(1893.) In *Zierenberg v. Labouchere* the libel consisted in a number of
2 Q. B. 183. general charges against the plaintiff in relation to her management of a certain home for inebriates. It was held that the defendant was bound to give particulars of the specific acts of misconduct on which the general charges were based, and that these particulars must be given before the defendant had discovery by way of interrogatories and inspection of document from the plaintiff.

INTERROGATORIES.—Either party is entitled to interrogate the opposite party as to his knowledge of any facts which would tend either to support his own case
24 Q. B. D. or to destroy that of his adversary (per Lord Esher, M.R.,
p. 417. (1888.) in *Hennessy v. Wright*). Before the Court, however, will order disclosure, it must be shewn that the facts sought are really sought for the purpose of carrying on the case, and not merely in the hope of making out a case of some sort against a defendant, or in default of that, against or in favour of some one or other. And even when the facts sought are material the Court has a discretion whether it shall or shall not order disclosure of them. As a rule it is loath to order discovery in libel actions save where in the interest of justice it is plainly necessary.

Thus, where the action is against the proprietor, printer, or publisher of a newspaper, and the alleged libel consists of an anonymous article or letter published in the newspaper, the name of the author of the article or letter, or of the person upon whose information the article or letter is based, is not as a general rule such a material fact as the Court will order to be disclosed (*Gibson v. Evans*); nor will the Court order inspection of the manuscript even when the defendant in his affidavit of documents admits he has it in his possession (*Hope v. Brash*).

^{23 Q. B. D.}
^{384.}
(1889.)

In the same way the negligence of the defendant, or his failure to take steps to verify the libel before publication, is not, even where the defendant pleads that there was no negligence (*Ridgway v. Smith*), a material fact which should be disclosed. Strictly speaking, the issue in a libel case is not how badly the defendant has behaved, but how much damage the plaintiff has suffered (*Parnell v. Wright*).

(1897.)
^{2 Q. B. 188.}

^{6 T. L. R.}
^{275.}
(1890.)

^{24 Q. B. D.}
^{441.}
(1890.)

Again, though the plaintiff is entitled to interrogate the defendant as to whether the libellous statement in which no name is mentioned was intended to refer to him, he cannot go further and ask the defendant, if it was not intended to apply to him, to whom was it intended to apply (*Wilton v. Brignell*).

W. N.
^{p. 239.}
(1875.)

But it is not to be assumed that facts which the Court will not permit to be obtained by interrogatories will not be admitted in evidence at the trial.

Where the libel is admitted, and the only question is as to the amount of damages, and probably even in cases where the libel is not admitted, the plaintiff is entitled to know whether or not the defendant admits that the circulation of the libel was considerable.

24 Q. B. D. In *Parnell v. Wright* the libel consisted of a series of articles
441. published in the *Times*, and subsequently republished in
(1890.) pamphlet form. The defendant had apologized for the libel
and paid forty shillings into Court. The plaintiff interrogated
the defendant as to the number of copies of the *Times* sold
containing each of the articles. The defendant in his answer
admitted a large circulation, but refused to answer more
specifically. The Court directed him to state the number of
copies approximately.

61 L. J., This decision, after being doubted (*Rumney v. Wright*),
Q. B., 149. was formally overruled by the Court of Appeal in
(1890.)
(1896.) *Whitaker v. Scarborough Post*, where a similar interroga-
2 Q. B. 148. tory was held sufficiently answered by a statement that
a considerable number of copies of the newspaper were
printed and circulated.

When the only defence set up is a plea of fair com-
ment on matters of public interest, no interrogatories will
be allowed which go to prove the truth of statements of
facts contained in the alleged libel, though these are
such as would be admissible had the defence been a
justification (*Hindlip v. Mudford*). But under such
6 T. L. R. a defence the defendant may, after giving notice as
367. (1890.) required by Or. xxxvi. R. 37, R.S.C., that he intends to
give evidence of certain matters in mitigation of damages,
interrogate the plaintiff as to the truth of such matters
(1892.) (*Scaife v. Kemp*).

2 Q. B. 319. The rule that the defendant in an action for libel is
bound to answer any interrogatory as to facts material
to the issue, is subject to the further limitation that no
one is bound to answer any question the answer to which
may tend to criminate himself. Every libel, as will be
explained in the next chapter, is, strictly speaking, a
crime, and consequently in an action for libel the defen-
dant may take advantage of the rule of law by which he

is entitled to refuse to disclose any fact which would tend to lay him open to an indictment. Thus he may decline to state whether he is the author of the alleged libel, or, if the alleged libel appeared in a newspaper, whether he was editor of that newspaper at the time the libel appeared, or what position on the staff he occupied. This is most important, as it sometimes renders it difficult, if not impossible, to fix the responsibility on the actual writer of a libel, or on the editor, sub-editor, or other member of the staff of the newspaper in which it appeared.

The protection afforded by this rule is, however, modified, so far as the “printer, publisher, or proprietor” of the newspaper is concerned, by 6 & 7 Will. 4, c. 76, s. 19, which section was re-enacted by 32 & 33 Vict. c. 24, schedule 2, and is therefore still in force, although the bulk of the original statute was repealed.

Sect. 19 provides that—If any person shall file any bill in any Court for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compellable to make the discovery required: provided always that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in that proceeding for which the discovery is made.

See *Carter v. Leeds Daily News and Jackson*.

W. N.
(1876.)
p. 11.

This enactment extends to Ireland.

The proper course, now, when the defendant objects to answer any interrogatory, is not to apply to the Court

R. S. C.,
Ord. XXXI.,
r. 6.

Rule 7. to have it struck out, but simply to take objection in the affidavit in answer. It is only when the interrogatories are objected to as a whole that an application should be made to set them aside (*Sammons v. Bailey*).
24 Q. B. D. 727.
(1890.)

DEFENCES.

In most libel actions the defence relied on is that the publication complained of does not fulfil some of the conditions already set forth as necessary in order to make a publication actionable. The defendant may plead that he was not a party to the publication; that the matter published is not defamatory; that it does not refer to the plaintiff; that it is privileged; that it is fair comment on a matter of public interest; or, finally, that it is true in substance and in fact. Even when the publication complained of does fulfil all these conditions, however, there may still be more than one valid defence.

These defences may be placed under five heads: (a.) Release by the plaintiff; (b.) Reparation by the defendant; (c.) *Res judicata*; (d.) Limitation; (e.) Death of a party.

RELEASE BY THE PLAINTIFF.—The cause of action which the publication of a libel gives the person libelled against the libeller may be parted with by the plaintiff himself for valuable consideration. In other words he can grant a release of it by means of a deed, or he can agree to give it up either in return for a money payment, or an apology, or any other consideration of value; but at the time he accepts the consideration he must be aware of the extent and nature of the wrong which has been done him.

In *Marks v. Conservative Newspaper Company* the defendants published an account of certain judicial proceedings in which severe reflections were thrown on the plaintiff in the judge's remarks. The plaintiff, on seeing it, went to the defendants' office, and there wrote a reply to those observations, which the defendants inserted in their paper. The plaintiff thereupon expressed himself as satisfied. Afterwards, however, he discovered that the reflections which in the report the judge was made to throw upon the plaintiff, had, as a matter of fact, never been uttered by the judge. Thereupon the plaintiff brought an action for libel against the defendants, who pleaded accord and satisfaction. The judge (Lord Coleridge, C.J.) allowed the case to go to the jury, who found for the plaintiff. ^{3 T. L. R. 244. (1886.)}

CONFESSION AND AMENDS.—Confession and amends is not strictly speaking a defence. It is really an admission that the plaintiff has been libelled, together with a payment into Court, or a payment into Court and an apology for the wrong done to him. By Order XXII., Rule 1, of the Rules of the Supreme Court, a defendant cannot pay money into Court in respect to a libel, and at the same time set up a defence denying all liability. He must admit that the plaintiff has just cause of complaint. That, however, does not mean that he admits everything of which the plaintiff complains. It seems clear that where the libel complained of consists of two or more distinct and separable statements, the defendant may admit that some of these statements are indefensible and pay money into Court in respect to these, while he sets up a defence of justification or privilege as to the others (see *Fleming v. Dollar*). ^{23 Q. B. D. 388. (1889.)} Or, while admitting that the original statement is libellous, he may pay money into Court in respect of it while he denies the plaintiff's innuendo. Or, after payment into Court, defendant may at trial offer evidence of plaintiff's character in mitigation of damages.

Confession and amends may consist, as has been said, either simply of a payment into Court or of a payment into Court accompanied by an apology to the plaintiff. In the former case, the payment into Court should be made before the defence is delivered, as otherwise it cannot be made without the leave of a master, and notice of the payment should be given to the plaintiff. In the latter case, when the libel complained of appears in a newspaper, the defendant should proceed as required by sect. 2 of Lord Campbell's Act.

6 & 7 Vict.
c. 96.

By that statute, in an action for a libel in "any public newspaper or other periodical publication," the defendant may plead that the libel was inserted without actual malice or gross negligence, "and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel, or if the newspaper . . . should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action . . . and that to such plea to such action it shall be competent to the plaintiff to reply generally denying the whole of such plea."

By sect. 2 of an amending Act passed two years later (8 & 9 Vict. c. 75) an apology under this section must be accompanied by a payment into Court; "every such plea so filed without payment of money into Court shall be deemed a nullity, and may be treated as such by the plaintiff in the action." It would appear, however, that under sect. 1 of the Act first quoted, which applies to "any action for defamation" whether the matter

complained of appeared in a newspaper or otherwise, an apology may still be tendered unaccompanied by payment into Court, but in this case it is only available in mitigation of damages.

The sufficiency alike of the payment into Court and of the apology and the absence of gross negligence and actual malice are, under sect. 2 of Lord Campbell's Act, questions for the jury.

In *Risk Allah Bey v. Johnstone* the action was against the *Standard* for a libel contained in a leading article commenting on a report of the plaintiff's trial. The defendants, not considering the article to be strictly justifiable, offered to publish an apology. The solicitor for the plaintiff thereupon sent an apology filling sixteen brief sheets. This the defendants declined to publish, but they published an apology of their own composition, which entered fully into the facts of the case, and occupied one column of the newspaper. The plaintiff was not satisfied with this, and brought an action for libel. The defendants pleaded that the libel was published without gross negligence or actual malice, and that they had apologized for it; and they paid 20s. into Court. Cockburn, C.J., in summing up to the jury said, that these were the questions to be decided: First, was there an absence of malice? Secondly, was there an absence of negligence? And thirdly, was the apology sufficient? If on any one point the plea failed, the plaintiff was entitled to recover; but if it was sustained on all, then the only question would be whether the action was not in substance answered? The jury found for the defendants, and the judge declined to stay execution for defendants' costs. ^{18 L. T. 620.} (1868.)

In order that the plea should be a good defence, the jury must find that all the ingredients of the defence are present—that is, that there was no gross negligence or actual malice, and that the apology and payment into Court are sufficient. If the defendant fail on any of these points, the verdict must be entered for the plaintiff,

with the consequence that the defendant will have to pay the costs of the action.

(1898.)
2 Q. B. 56. In *Oxley v. Willis* the defendant in an action for libel pleaded a defence under sect. 2 of Lord Campbell's Act. The jury found that there was no malice, that there was negligence, and that the apology was sufficient, and gave the plaintiff £5 damages, which was the amount paid into Court by the defendant. The judge (Darling, J.) held that the defendant had failed to establish his defence, and entered a verdict for the plaintiff. The defendant appealed; but the Court of Appeal sustained the ruling of the judge below.

No doubt this decision must be accepted as properly interpreting sect. 2 of Lord Campbell's Act. It has, however, the unfortunate effect of turning a provision intended for the special protection of newspapers into a trap for specially catching them. Henceforward no counsel for a newspaper will rely solely on sect. 2, since if the judge asks for special findings it will be practically impossible ever to sustain a plea under it. Hitherto it was thought that, even if the jury held that there was gross negligence, or malice, or that the apology was not sufficient, still, if they found that the payment into Court was sufficient amends for any wrong done, the verdict was in the defendant's favour. Now, however, if the defendant fail on any of these points, no payment into Court, however large, can constitute a defence under the section. If the defendant paid in £500, and the jury found, in spite of the negligence, or malice, or apology, that £5 was all the reparation necessary, it would seem to follow, from *Oxley v. Willis*, that the verdict must be for the plaintiff. Not only so, but if *Dunn v. Devon and County Newspaper Co.* be still law, the plaintiff would be entitled, in spite of the jury's finding, to the whole £500

(1895.)
1 Q. B. 211
(note).

paid in, which would not be the case if the payment into Court had simply been pleaded (*Gray v. Bartholomew*). (1895.)
 It will therefore be advisable henceforth in almost every case to set up, not a plea under sect. 2 of Lord Campbell's Act, but either a plea of apology and payment into Court under sect. 1, or one of simple payment into Court under Order XXII. 1 Q. B. 209.

By Rule 22 of this order the jury are not to be informed of the fact that money has been paid into Court. The Lord Chief Justice, in an unreported case (*Mackenzie v. Harris*, 30th July, 1896), refused to be bound by this rule where the defence was under sect. 2 of Lord Campbell's Act; but in *Williams v. Goose* the Court of Appeal held that it was binding in other cases of payment into Court, on grounds which seem to apply equally to payments into Court under sect. 2. (1897.)
 1 Q. B. 471.

RES JUDICATA.—If a previous action has been brought by the same plaintiff for the same libel against the defendant or any person jointly concerned with him in the publication of the libel, and judgment has been given in that action, that will be a good defence, whether the plaintiffs recovered damages, or whether having recovered damages they were satisfied, or whether the action was dismissed, except in the latter event it was dismissed on a technicality, and the judge expressly stated that the dismissal was only a non-suit at common law (*Brinsmead v. Harrison*). L. R. 7
 C. P. 547.
 (1872.)

Three points are to be here noted. In order that the judgment in a previous action may act as a bar, that previous action must have been brought by the same plaintiff against the same defendant or some one jointly liable with him for the publication of the libel, and for

the *same* libel. Each of these calls for a few words of explanation.

The previous action must be by the same plaintiff. The fact, however, that the same person has brought an action previously as a joint plaintiff may not prevent him bringing a second action as an individual plaintiff for the same libel, and *vice versâ*. Thus, if a libel be published concerning a firm, the members of the firm may proceed jointly for the injury done to the firm, and severally for the injury done to each one personally. Formerly, indeed, they could proceed in no other way, but now, under Order XVIII., Rule 6, claims by plaintiffs jointly may be joined with claims by them separately against the same defendants (see *Booth and others v. Briscoe*; *Harrison v. Bevington*).

In the next place the previous action must have been brought against the same defendant, or some one jointly liable with him for the publication of the libel. When are persons jointly liable for the publication of a libel? This is a very important question in the case of libels in newspapers, but it is one on which there is very little authority. It has been held that author and publisher are not jointly liable (*Frescoe v. May*). And in *Martin v. Kennedy* and *Banning v. Perry* it was held that actions against the printer or publisher did not prevent others against the proprietor, and *vice versâ*. But where the newspaper is owned by partners a judgment against one partner will be a bar to an action against any of the others (*Munster v. Cox*; and see *Duke of Brunswick v. Pepper*). In consequence of sect. 6 of the Libel Law Amendment Act, 1888, this point is now of less importance than formerly.

Supra,
p. 133.

R. S. C.,
2 Q. B. D.
496.
(1877.)
8 C. & P.
708.
(1838.)

2 F. & F.
123.
(1860.)
Infra.

1 T. L. R.
542.
(1885.)
2 C. & F.
683.
(1848.)

In *Martin v. Kennedy* and *Banning v. Perry* the facts were peculiar. There Martin and Banning complained of two libellous advertisements which had appeared in a newspaper called the *Morning Chronicle*, of which the defendant Kennedy was printer, the defendant Perry proprietor, and a person called Lambert publisher. Martin brought an action against Perry, and another against Lambert, in both of which he recovered damages. Banning brought an action against Kennedy, and another against Lambert, in both of which he recovered damages. Now Martin brought an action against Kennedy, and Banning against Perry for the same libel. The defendants applied to have the actions set aside in a summary way, on the ground that these actions were for wrongs for which both plaintiffs had already obtained satisfaction from other parties. *Held*, that the Court would not interfere. 2 Bos. & Puller, 69. (1800.)

In the third place the previous action must have been for the same libel. On this point *Macdougall v. Knight*¹ is important. 25 Q. B. D. (1890.)

In that case, which has been already referred to, the plaintiff having failed in an action against the defendant Knight for libel in publishing the report of a judgment against the plaintiff, which contained strictures on the plaintiff's conduct, and which was subsequently reversed, brought another action for libel based on the same publication. In his statement of claim in the first action the plaintiff had set forth certain passages of the judgment. In his second action he set out different passages. The plaintiff then took out a summons to have the statement of claim struck out as frivolous and vexatious, on the ground that if the action were allowed to proceed a plea of *res judicata* must be successful. The Court took this view. Fry, L.J., said: "Both actions are for libel contained in a pamphlet, and, therefore, I conclude the cause of action is the same. In my opinion, it is impossible that two actions should be properly brought in respect of the same libel. The injustice of allowing a litigant to select one portion of a libel as the ground for one action, and another as the ground for a second action, and so on, indefinitely, is obvious. The whole publication would be

before the jury in each case. It would be quite impossible for the jury in each case to separate the damages due to the particular part of the libel relied on in the case from the damages arising from other parts of the libel. I think, therefore, that a plea of *res judicata* would succeed, and that we are bound to stay the action. Suppose, however, this to be otherwise, still in such case I do not hesitate to say that such successive actions in respect to the same libel would be an abuse of the process of the Court, and so, *quâcunque viâ*, the application should succeed, and the action be stayed."

Formerly a plaintiff who found at the trial that the case was going against him was entitled as of right to elect to be non-suited. The effect of a non-suit at common law was to preserve to the plaintiff the right of bringing a fresh action against the same defendant on the same grounds. Non-suits now have practically been abolished, and their place is taken by discontinuance of the action under Order XXVI. Rule 1; and an action cannot now be discontinued except with the consent of the judge (*Fox v. Star Newspaper Co.*).
 R. S. C. (1898.)
 1 Q. B. 636.

LIMITATION.—When more than six years have elapsed since the last publication of the libel, it ceases by the Statute of Limitations to be actionable, unless at the time of publication the plaintiff was under disability or the defendant was beyond the seas, in which case the libel will continue to be actionable for six years after the removal of the disability or the defendant's return (21 Jac. 1, c. 16, s. 3; 4 & 5 Anne, c. 3 (al. c. 16), s. 19; 19 & 20 Vict., c. 97, ss. 10 & 12).

Supra,
 p. 156.

DEATH OF PARTY.—As has been pointed out, the cause of action in libel is personal, and so is put an end to by the death of either of the parties to the libel. This rule

applies whether the death of the party took place before action brought or after action brought, but before verdict. If, however, a verdict has been returned, the death of either plaintiff or defendant before the judgment based on the verdict has been delivered will not cause now any abatement (Ord. XVII., r. 1). If the judgment be in R. S. C. favour of the plaintiff and the defendant dies, it can be enforced against the latter's personal representatives.

DAMAGES.

It will be useless to attempt to lay down any rule as to the measure of damages. In the words of Lord Herschell, "The damages cannot be measured by any standard known to the law; they must be determined by a consideration of all the circumstances of the case viewed in the light of the law applicable to them" (*Bray v. Ford*). What damages shall be given is a (1896.) question entirely for the jury, their discretion in the A. C. 44, matter being limited only by the power of the Court of Appeal to set aside their verdict in cases where the damages appear to be grossly inadequate or grossly excessive. Where there is a cause of action, but the damages awarded are excessive, the Court may with the plaintiff's consent reduce them without ordering a new trial whether the defendant consents or not (*Belt v. Lawes*). 12 Q. B. D. 356.

In the recent case of *Praed v. Graham*, Lord Esher thus (1884.) stated the principle on which the Court would act in setting 24 Q. B. D. 53. aside a jury's verdict, on the ground that the damages (1889.) awarded were excessive: "The first question is, What is the rule of conduct which should be followed by the Court—either a Divisional Court or the Court of Appeal—to which an application is made in such an action as an action for a libel to set aside the verdict on the ground that the damages

given by the jury are excessive? I think that the rule of conduct is as nearly as possible the same as when the Court is asked to set aside a verdict on the ground that it is against the weight of evidence. If the Court, having fully considered the whole of the circumstances of the case, come to this conclusion only: 'We think that the damages are larger than we ourselves should have given, but not so large as that twelve sensible men could not reasonably have given them,' then they ought not to interfere with the verdict. If, on the other hand, the Court thinks that, having regard to all the circumstances of the case, the damages are so excessive that no twelve men could reasonably have given them, then they ought to interfere with the verdict. If the authorities are looked at, that will be found to be the rule of conduct which the judges have adopted. If the Court can see that the jury, in assessing damages, have been guilty of misconduct, or made some gross blunders, or have been misled by the speeches of counsel, those are undoubtedly sufficient grounds for interfering with the verdict; but they come within the larger rule of conduct which I have laid down, and are grounds which are included in the rule."

EVIDENCE IN AGGRAVATION.—A more important question is, What evidence will the Court admit in aggravation or in mitigation of damages?

In the first place, with a view to increasing the damages, evidence may be given of every circumstance which tends to aggravate the libel. The plaintiff, if he pleads it, may prove that he suffered actual damage in his trade or profession by shewing a diminution of business (*Ingram v. Lawson*); or, he may prove that he suffered much mental pain and worry in consequence of the libel (*Lynch v. Knight and Wife*).

6 Bing.
N. C. 212.
(1840.)

9 H. L. C.
598.
(1861.)

Supra.

2 H. L. C.
395.
(1851.)

Again, he may give evidence to shew gross carelessness or malice on the defendant's part (*Parnell v. Wright*), e.g., that he had previously published libels on the plaintiff (*Barrett v. Long*); or, he may prove that the

libel was scattered broadcast, or very widely circulated (*Parnell v. Wright*); or, he may prove that when the *Supra.* defendant published the libel he knew that it would be repeated in other quarters (*Whitney v. Moignard*).

24 Q. B. D.

630.

(1890.)

EVIDENCE IN MITIGATION.—On the other hand, the defendant is entitled to give in mitigation evidence of every circumstance which makes the publication less heinous. Of these, the most important are: absence of gross carelessness or of actual malice, and the character of the plaintiff. In case such evidence is to be tendered, particulars of the matter concerning which evidence is to be given must be furnished to the plaintiff at least seven days before trial, otherwise the evidence will only be admissible with leave of the judge: Order XXXVI., R. S. C. Rule 37.

The defendant may, as has already been pointed out, Page 217. bring forward evidence of an apology given or tendered in mitigation of damages.

As a general rule previous publication of the libel cannot be proved in mitigation of damages. Every repetition of a libel is a new wrong to the defendant, and the fact that the libel had appeared before is, generally speaking, irrelevant in an action for the new wrong (*Saunders v. Mills*). There are, however, two ex- 6 Bing. ceptions to this. The first is, when the repetition is on 213. (1829.) the face of it a mere repetition, as when one newspaper quotes another as its authority for the libel (*Duncombe* 8 C. & P. v. *Daniell*). Another exception exists where the repeti- 222. (1866.) tion, though not appearing on the face of it to be a repetition, really is a quotation from another publication, with some of the original charges omitted or modified. In both these cases evidence of the previous publication

3 T. L. R. may be given to negative malice (*De Bensaude v. Con-*
 538.
 (1887.) *servative Newspaper Co.*).

Formerly, not merely previous publication, but the fact that the plaintiff had already received damages for that previous publication was irrelevant. The law, however, has, as already stated, been altered on this point by sect. 6 of the Law of Libel Amendment Act, 51 & 52
 Vict. c. 64. 1888, which runs as follows:—

At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages or has received, or agreed to receive, compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Three points are worthy of notice in this important section. In the first place, like all the provisions of this *Supra*, p. 2. Act and that of 1881, it only applies in actions against newspapers appearing at intervals not exceeding twenty-six days. In the second place, evidence may be given, not merely that damages have been recovered, but that an action has already been brought, or compensation accepted for the same libel; accordingly, if the previous action had resulted in a verdict for the defendant that verdict could be proved. Thirdly, it would appear that though only newspapers benefit by this enactment, the previous action need not have been against a newspaper.

NEW TRIAL.—By Ord. XXXIX. r. 6. R. S. C. “a new trial shall not be granted on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to

leave to them, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial." Misdirection on a material part of the libel will be a sufficient ground under this rule to justify a new trial, even though the Court were of opinion that the jury, had there been no misdirection, would have given the same verdict (*Bray v. Ford*). And the admission of evidence for the defendant other than that tendered in support of particulars in mitigation of damages, especially if accompanied by the rejection of rebutting evidence on behalf of the plaintiff, will also constitute ground for a new trial (*Maclaren v. Davis*). A new trial may also be granted on the ground that the verdict is against the weight of evidence, but that will be done only when the verdict is one to which reasonable men could not honestly come (See *Praed v. Graham*).

(1896.)
A. C. 44.

6 T. L. R.
372.
(1890.)

Supra,
p. 223.

COSTS.

Libel actions are usually tried before a jury, though, by the Rules of Court, unless notice for a jury be given, they are to be tried before a judge without a jury. Either plaintiff or defendant can claim as of right to have a jury (R. S. C., Ord. xxxvi., r. 2).

When they are tried before a judge the costs are in his absolute discretion; when tried before a jury the costs follow the event, unless the judge sees good cause to order otherwise (R. S. C., Ord. lxv., r. 1), in which case he can refuse the successful party his costs or even direct him to pay the costs of the unsuccessful party. The last course, however, is one seldom taken, except in cases of very gross misconduct.

4 Q. B. D. In *Harris v. Petherick* the plaintiff sued the defendant for
 611. £85 commission and 6s. for an advertisement of a sale. He was
 (1879.) non-suited. He brought a second action for the same claim, and the jury awarded him the 6s. but found for the defendant as to the £85. The judge ordered the plaintiff to pay the defendant's costs in both actions. On appeal this order was affirmed.

"Good cause" is a question of fact upon which the parties may appeal. Usually if the jury give what are called contemptuous damages—that is, a farthing—that is considered good cause to deprive the plaintiff of his costs, but nominal damages—as 40 shillings—is not so considered (*Hopley v. Williams*).

6 T. L. R.
 3.
 (1889.)

INJUNCTIONS.

Prior to the Common Law Procedure Act, 1854, no Court could grant any injunction in a case of libel. The Court of Chancery could grant no injunction in such a case, because it could not try a libel. Neither could Courts of Common Law until the Common Law Procedure Act, 1854, because they had no power to grant injunctions. Whether they had power to grant an interlocutory injunction after 1854 is doubtful. The first instance of exercising the power of granting an injunction in libel was
 3 C. P. D. *Saxby v. Easterbrook*, in 1878, and that after trial (per
 339. (1878.) Lopes, L.J., in *Monson v. Tussaud*). Within the last few
 (1894.) years, however, the Chancery Courts have taken upon
 1 Q. B. 671, themselves to restrain by an interlocutory injunction the
 at p. 692. publication of matter on which a jury has never had an opportunity of pronouncing an opinion.

Such injunctions are now not infrequently granted in the Chancery Division on the interlocutory application of one of the parties to an action. Before granting an injunction, however, the Court must be satisfied that

the matter is such as a jury would or should find libellous, that it is in substance false, and that it is not privileged, or if privileged, that it is published maliciously.

In the *Quartz Hill Consolidated Gold Mining Co. v. Beall*, 20 Ch. D. Jessel, M.R., said: "There is jurisdiction in a proper case^{507.} upon interlocutory application to restrain the further publication of a libel. But the question as to whether the jurisdiction, though existing, has been properly exercised is quite different. It is a jurisdiction which must be very carefully exercised. No doubt there are cases in which it would be quite proper to exercise it, as, for instance, the case of an atrocious libel wholly unjustified and inflicting the most serious injury on the plaintiff. But, on the other hand, where there is a case to try, and no immediate injury to be expected from the further publication of the libel, it would be very dangerous to restrain it by interlocutory injunction." (1882.)

The question of interim injunctions in the case of alleged libels was considered at some length in the *Liverpool Household Stores Association v. Smith*.^{170.} The plaintiffs were a limited joint-stock company, with a nominal capital of £100,000, of which about a third was actually subscribed. Owing to a dispute as to the premises which should be bought to carry on the proposed business of the company, two of the directors resigned. In consequence, various meetings of shareholders were held, at which considerable heat prevailed. Shortly after these meetings the *Liverpool Mercury*, which had published accurate reports of them, inserted several letters from shareholders, in which the affairs of the company and the conduct of the directors were somewhat severely canvassed. It was admitted by the defendants that these letters were not accurate in all details. The plaintiffs brought an action for libel, and applied for an interim injunction to restrain the defendants from publishing any articles, letters from correspondents, or other matter containing imputations on the solvency of the company, or on its ability to carry on business with success, etc., etc. The defendants resisted this motion on the ground that the letters complained of were inserted, without negligence or malice, upon matters of interest affecting a public company which had invited the public to take its shares, and which was of considerable interest to the (1887.)

Liverpool public. Kekewich, J., while refusing the injunction asked for, on the ground of the difficulty of framing an injunction which would not include matters which might turn out not to be libellous, at the same time said that there could be no doubt that the Court was entitled to grant an interim injunction in libel cases where irreparable injury might be done by the publication of the libel before the trial came on. The plaintiffs appealed, but the Court of Appeal affirmed the decision, without calling on defendant's counsel. Cotton, L.J., in the course of his judgment, pointed out that the injunction asked for was not to restrain the republication of the reports of the meetings of shareholders and the letters of shareholders which had already appeared, but to restrain the publication of any future reports or matter—a very different thing. “In *Coulson v. Coulson* the Master of the Rolls said that to justify the Court in granting an injunction, it must come to a decision on the question of libel or no libel before the jury decided whether it was a libel or not; that the jurisdiction, therefore, was of a delicate nature, and ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous, and where, if the jury did not so find, the Court would set aside the verdict as unreasonable. That is what the Master of the Rolls said with reference to an existing document brought before the Court, and Lord Justices Lindley and Lopes concurred in that ruling. Now in the case of an existing document brought before the Court, the Court can judge of its character; but how can the Court judge whether documents which are not yet in existence will be libellous? In my opinion it would be very dangerous to grant an interlocutory injunction with reference to future publication, unless we could lay down definitely some line which would include only the publication of what would necessarily be libellous. In my opinion it would be very unadvisable to grant any injunction which would restrain fair discussion in the newspapers of matters of importance, like that of the probable success or failure of a public company. . . . I think that a newspaper occupies a peculiar position, especially with regard to matters concerning the interest of those amongst whom the newspaper circulates, such as the discussion of the condition of a company like this. I do not say that any statements or letters printed in the defendant's newspaper, making

3 T. L. R.
846.
(1887.)

reflections of the character indicated in the notice of motion, will not be libellous; but I cannot say that the jury would necessarily find them to be libellous."

In the case of *Bonnard v. Perryman* the plaintiffs applied for an injunction, first to restrain the defendants from continuing to publish an alleged libel which had appeared in the defendant Perryman's newspaper; and secondly, to restrain the defendants from publishing further libels of a similar kind until the action then pending between the parties had been disposed of. The plaintiffs in their affidavits denied the truth of the libel; and the defendants, who had pleaded justification in the action, filed affidavits averring that at the trial they would produce evidence to prove their plea. North, J., however, taking all the circumstances of the case into consideration, declared himself satisfied that no jury would find a verdict for the defendants, and accordingly granted an injunction restraining the further circulation of the libel already published, but refused it as to future libels. The defendants appealed, and the case was argued before the full Court of Appeal. All the judges agreed that the Court had power to grant interlocutory injunctions in libel actions, and that the jurisdiction was one which the Court should exercise very cautiously. The majority of the Court (Lord Coleridge, C.J., Lord Esher, M.R., and Lindley, Bowen and Lopes, L.JJ.; Kay, L.J., dissenting) adopted as part of their judgment the passage cited above from the judgment of the Master of the Rolls in *Coulson v. Coulson*, and, applying it, held that the decision of North, J., must be reversed. (1891.)
2 Ch. 269.

CHAPTER V.

LIBEL AS A CRIMINAL OFFENCE.

IN the preceding chapters libel has been discussed from the point of view of the civil courts, as a matter of wrong or injury between individual and individual. There is, however, an older, and in a sense a more important, side to the question; that of libel as it affects the public peace, coming, as it then does, within the scope and cognizance of the criminal courts. At one time criminal libels, or public libels as they may be called, especially in the shape of government prosecutions for blasphemy, sedition, and so forth, were the class of libels that came most frequently before the courts, and this is still the case in most foreign countries. Nowadays, however, the criminal law is very rarely put in motion by the State, and in the case of newspaper libels, private persons can only invoke it, as we shall see presently, with the consent of a judge in chambers.

The criminal law regards libel from a standpoint essentially different from that of the civil law. The latter considers it simply as an injury to the individual, the former as an injury to the State. It follows that each system has its own tests, by which it defines the scope and limits of its cognizance. The test of the civil law is: has the defendant injured the plaintiff's

legitimate reputation? The test of the criminal law is, has the defendant in publishing the libel done an act likely to lead to a breach of the peace, or to outrage the public conscience, or good morals, or to endanger the safety of the State?

Of these two tests, that of the criminal law is evidently the wider: it includes all publications which satisfy the civil law tests and many others which do not, so that while every publication which is libellous at civil law is also libellous at criminal law, the reverse does not hold.

CLASSES OF CRIMINAL LIBELS.—Criminal libels may best be divided into two classes, defamatory libels, and disorderly libels. The first class consists of those which are primarily attacks upon private character. These are, generally speaking, at the same time actionable wrongs, and are only indictable because they are calculated to provoke the person whose character is assailed to a breach of the peace. Libels of the second class are primarily outrages on the public conscience, or good morals, or on the safety of the State. No individual being specially injured by them, they are never actionable. They are purely criminal libels.

Before discussing these classes separately, two points may be mentioned which affect them both.

RESPONSIBILITY IN CRIMINAL LIBEL.—The more important of these is with regard to the liability for publication. Who may be held liable, criminally, for the publication of a libel?

In civil law, as we have seen, in the case of a libel appearing in a newspaper, the registered proprietor, the printer, the publisher, the author, the editor, the vendor,

and every other person consciously concerned in preparing or circulating it, are each and all regarded as parties to the publication, and responsible in damages for it. The criminal responsibility, however, which was at one time, presumptively at least, the same as the civil, has been subjected to a very important modification by sect. 7 of Lord Campbell's Act. This section, which, be it noted, is not, like section 2 (apology and payment into Court), restricted to "public newspapers and other periodical publications," but applies to publications of every sort, runs as follows:

6 & 7 Vict. c. 96, s. 7. And be it enacted, that whensoever, upon the trial of any indictment or information for the publication of a libel under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

The practical effect of this enactment, as shewn by the decisions upon it, is to free from criminal responsibility for a libel every one presumptively responsible for the publication who is not personally engaged in publishing it and not consciously or by criminal negligence a party to its publication. The proprietor who takes no active part in the management of his newspaper is the person who most often benefits by this, but occasionally other persons come within its protection too, as will appear from the following cases.

3 Q. B. D. 60, 4 Q. B. D. 42. (1878.) In *R. v. Holbrook*, a criminal information had been obtained against the proprietors of the *Portsmouth Gazette* for a libellous letter which appeared in the newspaper. At the trial

it was shewn that the letter in question had been inserted without the actual knowledge or consent of the defendants—indeed, one of them was absent from Portsmouth at the time of publication—but it was admitted that they had given the editor a general authority to conduct the paper and to decide what should be published and what not, and that he inserted the letter in question. At the trial at Winchester, before Lindley, J., a verdict was returned against all the defendants. This verdict was set aside and a new trial ordered. The second trial took place before Grove, J., who, in summing up, left it to the jury to say whether the general authority to the editor included an authority to publish the libel complained of. The jury found all the defendants guilty.

On motion for a new trial, Cockburn, C.J., and Lush, J.—Mellor, J., dissenting—held that the “authority” mentioned in the 7th section must be read as authority to publish the libel, and that the general authority given to the editor, to use his discretion in admitting or rejecting articles or correspondence, was not in itself sufficient under the circumstances to make the proprietor criminally responsible.

Cockburn, C.J., in delivering judgment, pointed out that the doctrine did not mean that a proprietor could not be held criminally liable for a libel appearing in his paper unless he actually authorized its insertion. A general authority to insert libellous matter, or a knowledge that libellous matter had been inserted frequently by the editor with no consequent action on the proprietor's part, or any negligence on the proprietor's part such as the employment of a notoriously incompetent or untrustworthy editor, or habitual neglect to inquire how the newspaper was conducted; these and all similar circumstances were evidence from which the jury might infer a tacit authority from the proprietor to publish the libel, and so might render him criminally liable for it. But the mere circumstance that the editor had a general discretion as to what should be inserted was not in itself enough to support a verdict against him under the Act, as the summing up of Grove, J., in this case might have led the jury to believe. A new trial was accordingly necessary.

The case of *R. v. Ramsay and Foote* is important as bearing ^{15 C. C. C.} on the criminal liability of the publisher and editor of a ^{231.}
(1883.)

newspaper in which a libel has appeared. In this Ramsay, the publisher, and Foote, the editor, of a paper called the *Freethinker* were indicted for a blasphemous libel alleged to have been published in that paper. It was there held by Lord Coleridge, C.J., that proof that Ramsay was the person registered as proprietor and publisher of the paper was not sufficient to prove him criminally liable. Evidence, however, that he himself had sold a copy of the paper containing the alleged libel was sufficient to establish a *prima facie* case against him. As to Foote, evidence that he was the editor at the time the libel was published was not sufficient. It was necessary to shew that the libel had been inserted with his express consent, or by his express direction. His lordship, adopting the language of Lush, J., in *R. v. Holbrook*, held that the question of authority to publish in criminal cases is now not a presumption of law but a question of fact.

15 C. C. C.
217.

(1883.)

In *R. v. Bradlaugh* the point was whether a person who allows his publishing house to be used for the publication of a newspaper, the general character of which he knows, is a sufficient authority to publish to render him criminally liable for a libel appearing in that newspaper. The defendant in this case had been jointly indicted with Foote and Ramsay for the alleged blasphemous libel mentioned in the last case, but, on the plea that he was not connected with the *Freethinker*, it was held that he was entitled to a separate trial (Ramsay and Foote being previously convicted for publishing a libel in that paper). Mr. Bradlaugh admitted that he knew the general character of the paper, that it was published in his publishing house, and by Ramsay, who was employed by him in connection with his own journal, and who received less pay since he had established the *Freethinker*. On these facts, Lord Coleridge held that the jury might acquit Mr. Bradlaugh. The jury acquitted.

32 Geo. 3,
c. 60.

FOX'S LIBEL ACT.—Another point in common may just be referred to. Previous to Fox's Libel Act it was the practice for the judge to leave to the jury two questions. First, had the prisoner published the alleged libel? Secondly, did it bear the meaning put upon it

by the innuendo? If the jury found these two points in the affirmative, then it was for the Court to determine whether the matter was libellous or not. Since that Act, though the judge may state his opinion to the jury and advise them as he thinks right, they are entitled to return a general verdict of guilty or not guilty. This, however, does not preclude the jury from returning a special verdict if they think proper to do so.

It may be added that in criminal law there is no joint responsibility (see *supra*, p. 219). Accordingly, every one consciously a party to the publication of a libel is at common law liable to prosecution, and the fact that some other person who was concerned in the publication jointly with the defendant has or has not been proceeded against or convicted is no answer to the charge.

DEFAMATORY LIBELS.

This class includes all libels for which an action will lie. It includes, however, some others; for whilst, as we have just seen, the proof of personal responsibility to the criminal law is required to be more strict than in civil law, the conditions enumerated in previous chapters which must be strictly satisfied before a cause of action arises, are relaxed in criminal law, on the following points:—

With regard to publication.

As to proof that the defamatory statement applied to the plaintiff or prosecutor.

As to justification of the libel.

PUBLICATION.—As to publication, the rule in the criminal law is that, to constitute publication, it is not absolutely necessary that the libellous matter should

be communicated to a third person—communication to the plaintiff or prosecutor himself being sufficient. As, however, publication to third parties may be taken for granted in the case of a newspaper, this point need not be further dwelt upon here.

DEFAMATION.—As to the necessity of shewing that the defamatory words apply with certainty to the plaintiff or prosecutor, the criminal law in certain cases dispenses with this. Thus it would seem that if an attack be made upon the memory of a dead ancestor, an indictment will lie on proof that the intent or natural effect of the attack is to injure one or all of the descendants in so grievous a way as to be likely to provoke them to a breach of the peace. And in the same way an attack on a class or sect of people generally, of such a character as to bring them into popular odium, and so lead to their being mobbed, will be indictable, though no particular member of the sect or class be mentioned or indicated.

4 T. R. 126. (1791.) In the old case of *R. v. Topham*, the prisoner was charged with publishing a libel reflecting on the memory of the late Earl Cowper. The jury convicted. On appeal, the judgment was arrested on the ground that the indictment did not allege that the libel tended to excite the late Earl Cowper's relations to revenge and a breach of the peace, Kenyon, C.J., holding, however, that if the indictment had contained such an allegation, then if the jury considered it proved they could have convicted (see also *R. v. Critchley*).

4 T. R. 129, n. (1734.) In the modern case of *Reg. pros. Vallombrosa v. Labouchere*, 12 Q. B. D. 320. (1884.) however, doubts were expressed whether under any circumstances publishing a libel concerning a dead man was a criminal offence.

Ind. Law Rep. 5, Bombay, 580. (1881.) And see *Luckumsey Rowji v. Hurbun Nursey*.

PRIVILEGE AND JUSTIFICATION.—With regard to legal

excuse—that is, privilege—the rules of criminal law are precisely the same as those of civil law. Privilege, absolute or partial, will arise under the same circumstances as at civil law, and when it does arise it will constitute the same protection. Proof of malice will, in the same way, abolish partial privilege. It may be added that, just as in civil cases, so in criminal cases, it is not necessary, except where the matter is privileged, to prove actual malice, while it is permissible for the defence in every case to give evidence of absence of malice with a view of mitigating punishment.

With regard, however, to justification, there is a great difference between civil and criminal law. At one time the rule in criminal law was, “The greater the truth, the greater the libel.” That rule was abolished by Lord Campbell’s Libel Act. In criminal proceedings for libel justification can now be pleaded, but in order to support it it is necessary to prove, not merely that the statements contained in the libel are true, but that it was for the public benefit that they should be published. The words of the enactment are as follows :—

On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published. To entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation; and further to allege that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said

6 & 7 Vict.
c. 96, s. 6.

matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof. If after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the Court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea and by the evidence given to prove or disprove the same: Provided always, that the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification: Provided also, that, in addition to such plea, it shall be competent to the defendant to plead a plea of not guilty: Provided also, that nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty which it is now competent to the defendant to make under such plea to any action or indictment or information for defamatory words or libel.

51 & 52

Vict. c. 56.

By section 4 of the Newspaper Libel and Registration Act, 1881, where the person charged is the proprietor, publisher, or editor, or any person responsible for the publication of the newspaper in which the alleged libel appeared, evidence of the truth of the libel, and that its publication was for the public benefit, may be given before trial, namely, when the case is before the magistrate or court of summary jurisdiction, and the Court or magistrate, if of opinion, after hearing such evidence, that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case. *See further, infra, p. 252.*

DISORDERLY LIBELS.

The libels which we have classed under this head differ altogether from those hitherto dealt with. They are not, indeed, in the popular sense libels at all—that is, they are not defamatory. They are simply writings

which the State for public purposes, and chiefly because it thinks them likely to provoke disorder or to outrage public feeling, has resolved to interdict.

All disorderly libels have certain points in common which may be referred to shortly before considering the various classes separately. In the first place, as has been already said, they are all crimes and nothing but crimes: no civil proceedings can be taken upon them, for the simple reason that not being attacks on private individuals no private wrong is done. They are injuries to the State, and their authors are responsible to the State alone. In the second place, there are no privileged occasions with regard to them, so far at least as newspapers are concerned. The report of a judicial proceeding which contains a blasphemous or indecent libel cannot be defended on the ground that such reports are privileged. Finally, in their case truth is no defence, or, in other words, they cannot be justified. Formerly, as we have seen, this was also the law in the case of all criminal proceedings for libel, but the protection afforded by Lord Campbell's Act is expressly limited to "defamatory libels" (*Ex parte O'Brien*).

12 Ir. L. R.
29; 15
C. C. C. 180.
(1883.)

CLASSES OF DISORDERLY LIBELS.—Disorderly libels may be divided into blasphemous, obscene, and seditious libels.

BLASPHEMOUS LIBEL.—Whatever may have been the law at one time, it is abundantly clear from recent decisions that in the future no publication will be held to be a blasphemous libel merely because it impugns the fundamental doctrines of Christianity. In order that any matter may be a blasphemous libel it must be

proved not to be an honest and decent attempt to discuss a sacred subject, but to be written or published with the malicious intent of insulting and outraging the feelings of Christians or of misleading the minds of the uneducated. The best evidence of such an intention will be the circumstances under which the matter was published, and the nature of the matter itself.

48 L. T.
733.

(1883.)

This is the law as laid down in *R. v. Ramsay and Foote*. A revised report of Lord Coleridge's luminous summing up in that case is given in the Appendix to Mr. Blake Odgers's work on Libel and Slander (2nd edit.), and it deserves careful perusal. One sentence in it gives his lordship's view of the law of blasphemous libel in a nutshell: "If the decencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of blasphemous libel." The old *dicta* which declared the Christian religion to be part of the Common Law of England and any questioning of its truth legal blasphemy, if they ever were correct, are no longer applicable to present circumstances, or, if applicable, will certainly never be applied.

L. R. 3
Q. B. 371.
(1868.)

OBSCENE LIBEL.—Any matter the tendency of which is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands the matter is likely to fall (per Cockburn, L.C.J., *R. v. Hicklin*), is an obscene libel. It is to be observed that two conditions are here mentioned. The first is that the matter must have a tendency to corrupt certain minds. The second is that it must be so published as to be likely to fall into the hands of those subject to its vicious influence.

This latter condition is of the utmost importance, as but for it books such as many medical treatises and classical works would come under the ban of the law. These, however, are fully protected if published in such

a way as not needlessly to attract the attention of those likely to be injured by them. A publication may be innocent enough under one set of circumstances, which, under another, will be held obscene. For instance, an article proper enough in a medical paper may be held an obscene libel when published in an ordinary journal. In the same way a scientific pamphlet, proper enough when advertised only in scientific papers and sold at the ordinary price, may become an obscene libel if widely advertised and sold at a cheap price.

In *R. v. Hicklin* the facts were as follows: Henry Scott was the publisher of a book called *The Confessional Unmasked*. This purported to be extracts from Roman Catholic theological writings in Latin, and accompanied by a free English translation. Part of the matter was grossly obscene. By order of the defendants (who were justices) the police seized the work for the purpose of destroying all copies of the book. Scott appealed. At trial at quarter sessions it was found that Scott did not sell the pamphlet with the object of depraving the public morals, but for the purpose of exposing the errors of the Church of Rome. The recorder holding that under these circumstances the publication was not an obscene libel, the magistrates appealed. The Court of Queen's Bench held that whatever the motives of the publisher, the publication was obscene, and the order of the justices was right. L. R. 3
Q. B. 360.
(1868.)

Steele v. Brannan was an appeal against a similar order for destruction. Here the publication consisted of a report of the trial of the publisher of the obscene pamphlet condemned in the above case, and in the report not merely appeared the portions of that work read in Court but other portions not publicly read. The defence was, (1) absence of criminal intent, (2) privilege. But it was held that the privilege of publishing reports of judicial proceedings did not protect the publication of obscene matter, whether it was read publicly in the course of such proceedings or not; and that the intent of the publisher was of no importance provided that the natural effect of the publication was to deprave morals. L. R. 7
C. P. 261.
(1872.)

SEDITIONOUS LIBEL.—Seditious libel is a very vague offence, stretching from high treason on the one hand to contempt of Court on the other. It is defined as the publication in some permanent form of seditious matter. And seditious matter is defined as matter “tending to bring into hatred or contempt the person of his Majesty, his heirs, or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or to excite his Majesty’s subjects to attempt the alteration of any matter in Church or State as by law established, otherwise than by lawful means” (60 Geo. 3, and 1 Geo. 4, c. 8, s. 1), or “to raise discontent or disaffection amongst her Majesty’s subjects, or to promote feelings of ill-will and hostility between different classes of such subjects” (Stephen’s Dig. of Crim. Law, 4th ed. art. 93).

Publications coming within this definition may sometimes amount to high treason or treason felony. For instance, a newspaper article inciting the public to murder, or wound the Queen would be high treason (see 36 Geo. 3, c. 7; 57 Geo. 3, c. 6; 11 & 12 Vict. c. 12, s. 1). And an article inciting a foreign nation to invade the kingdom in order to overturn the government by law established may be held treason felony (see 11 & 12 Vict. c. 12, s. 3). As regards an attack upon either House of Parliament, or on one of the Courts, it is generally punished, not as a seditious libel, but as a contempt.

Prosecutions for seditious libel are now very rare. When they are undertaken it is usually because of the disturbed state of the district in which they are published, and the jury are entitled to take this circumstance into consideration in deciding whether the writing is

seditionous or not (*R. v. Sullivan*). Speaking generally, it would be difficult or impossible now to obtain a conviction except it is made clear to the jury that the matter charged is calculated to lead to public disorder. ^{11 Cox, C. C. p. 50-54. (1868.)}

In *R. v. Sullivan* the defendant was the editor and proprietor of the *Weekly News*—a Dublin Nationalist newspaper. He was indicted for seditious libel on account of certain comments made in the paper on the execution of three men for the murder of Sergeant Brett in Manchester. Among the matters charged as seditious were certain cartoons. One of these was called “England and Austria: A Striking Contrast,” and represented Austria setting Hungary free, while England holds Ireland bound, and tramples on her. This was said to represent the suspension of the Habeas Corpus Act in Ireland. The other cartoon was entitled: “It is Done!” and represented a female figure with a drawn dagger which dripped with blood, trampling on a balance and scales. The prosecution contended that the woman was meant to represent the English Government, and the balance and scales justice. The defence said the woman was really intended to represent that part of the British public who assembled outside the prison at the time of the execution. The rest of the alleged seditious matter consisted of articles some of which referred to freeing Irish soil from the curse of British misrule by force of arms. Fitzgerald, J., in his summing up, pointed out that the question was not what was meant by the cartoons and articles, but what persons who saw them thought they meant. He also said that though the judge should point out what sedition was, the jury were not bound by his ruling, but should exercise their own judgment in deciding whether the matter alleged to be seditious was calculated to promote disorder, and in deciding this they might take into consideration the condition of affairs in the country. Verdict, guilty. ^{11 C. C. C. 50. (1868.)}

In order that anything may be seditious, it must be contrary to the allegiance due to the sovereign. Accordingly an article in an English newspaper inciting the subjects of a foreign sovereign to rebellion or outrage

cannot be held a seditious libel. It may, however, amount to an incitement to murder within 24 & 25

7 Q. B. D. Vict. c. 100, s. 4 (see *Reg. v. Most*).

244.

(1881.)

THREATENING TO PUBLISH.—By 6 & 7 Vict. c. 96, s. 3, it is a misdemeanour to publish or threaten to publish any libel upon any other person, or to threaten to publish, or propose to abstain from publishing, or to offer to prevent the publishing of any matter or thing touching another, with intent to extort money or gain, or to procure for any one any appointment or office of profit.

4 F. & F.

316.

(1865.)

In *R. v. Coghlan*, the prisoner was indicted for threatening to publish “certain matter with intent to extort money from one W. Gee.” The “certain matter” consisted of a placard announcing that, if not previously disposed of by private contract, a debt due by the said W. Gee would be disposed of by public auction. It appeared that the alleged debt arose out of some business transactions, and that the prisoner had not demanded money but an account. The judge ruled that whether this placard was libellous or not, if the threat to publish it was made with the intent to extort money, then the prisoner was guilty of a misdemeanour under the second part of the above enactment. If, however, the threat was used with the intent to obtain a statement of accounts from the prosecutor, that did not amount to an intent to extort money. Verdict, not guilty.

10 C. C. C. By 24 & 25 Vict. c. 96, ss. 46, 47, it is a felony to

42.

(1864.)

accuse or threaten to accuse another of any infamous crime whether by letter or otherwise, with intent to extort money or gain (*R. v. Ward*).

CHAPTER VI.

CRIMINAL PROCEDURE.

THERE are three methods of proceeding in cases of criminal libel: (*a*) by criminal information, (*b*) by indictment, (*c*) by summary proceedings. The first two methods may, generally speaking, be adopted in all cases of criminal libel; the last is applicable only in cases of indecent libel.

CRIMINAL INFORMATION.

Criminal informations may be laid either by the Attorney-General acting *ex officio*, or by the master of the Crown Office acting at the instance of a private prosecutor. In the former case the information issues as of course, in the latter the consent of the Queen's Bench Division is necessary before the information can issue (4 & 5 Will. & M. c. 18; C. O. R. 46). *Ex officio* informations for libel are now practically obsolete. As to informations by private prosecutors, the consent of the Court to their issue is now seldom given unless the libel is one directly affecting the public, as, for instance, when the applicant, or "relator" as he is called, holds some public office, or when the libel is one calculated to impede the course of justice or is directed not against an individual but against a body or class.

12 Q. B. D. See Lord Coleridge's judgment in *R. v. Labouchere*. The
 320. facts in this case were as follows: The applicant was the
 (1884.) Duke of Vallombrosa. The defendant had published in *Truth*
 a statement to the effect that the late Duke of Vallombrosa—
 father of the applicant—was “an army contractor who was
 nearly hanged on the charge of supplying as meat to a French
 army corps the flesh of soldiers who had died in hospital or
 who had been killed in battle.” For this an application was
 made for a criminal information. The application was resisted
 on three grounds:—(1) Because the applicant was a foreigner;
 (2) Because the libel was on a deceased person; (3) Because
 criminal informations ought only to be granted where the
 applicant holds some public position, and the libel refers to
 his behaviour in that position. The Court, while holding that
 informations might be granted at the suit of foreigners, con-
 sidered the fact that the applicant was a foreigner to be strong
 reason for rejecting the application, and while declining to
 say that a libel on a deceased person might not make the
 libeller criminally liable at the suit of that deceased person's
 descendant, considered that also a good ground for refusing a
 criminal information. On the third objection the Court decided
 for the defendant.

METHOD OF PROCEDURE.—The method of procedure
 when application is made by a private person for a
 criminal information, differs in several respects from
 that followed in ordinary criminal cases. The relator
 files affidavits proving publication of the libel, specific-
 ally denying its truth, and stating the circumstances
 surrounding it. Counsel then, on his behalf, moves the
 Court to grant a rule calling on the defendant to shew
 cause why an information should not be issued against
 him. On the defendant shewing cause, the Court, after
 hearing argument, either dismisses the rule, after which
 in ordinary cases no further application for an informa-
 tion can be made, though the prosecutor may still
 proceed by indictment, or makes it absolute. In the

latter case the relator must enter into recognizances in £50 to prosecute effectually. An information is filed at the Crown Office (C. O. R. 46), and to this the defendant must appear. After appearance, the defendant has ten days to plead or demur, after which, whether the information was laid by the Attorney-General or by the Master of the Crown Office, the trial proceeds precisely as if an indictment had been found by a grand jury, and the case had been removed to the Court of Queen's Bench by certiorari. The trial takes place before the Queen's Bench (when the information was laid by the Attorney-General he is entitled to demand, if he likes, a trial at bar, *i.e.* before three judges), and either party can obtain a special jury (C. O. R. 158), exactly as in a civil case. If the trial results in a conviction the defendant may move for a new trial on the same grounds as in an action. If, however, this motion is refused, there is no appeal.

COSTS.—In cases of defamatory libels, proceeded against by criminal information, when the trial results in an acquittal of the prisoner, he is entitled to the costs to which the information has put him, but when it results in a conviction the relator cannot recover the costs of the prosecution or any part of them, unless the prisoner has pleaded justification, in which case the relator is entitled to the costs to which he was put in consequence of that plea (C. O. R. 50, and 6 & 7 Vict. c. 96, s. 8).

PROCEEDINGS BY INDICTMENT.

CONSENT OF JUDGE.—Section 8 of the Law of Libel Amendment Act, 1888, contains an important alteration ^{51 & 52}
^{Vict. c. 64.}

in the law as to criminal prosecutions for libels appearing in newspapers. That section enacts that "no criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper, for any libel published therein, without the order of a Judge at Chambers being first had and obtained.

"Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application."

It is to be observed that the protection afforded by this clause against vexatious prosecution extends to the proprietor, publisher, editor, or "any person responsible for the publication" of the newspaper. Obviously, this does not include the writer of the libel, unless he be also editor or some "person responsible" for the publication of the paper. Under "editor" and "person responsible" might possibly be included the sub-editor, reporter, or other member of the staff, acting in the ordinary course of his duty. "Publisher," it would seem, does not include the printer (see *R. v. Allison*).

¹⁶ C. C. C.
^{559.}

(1889.)

It is further to be noticed that "newspaper" in this Act is to have the same meaning as in the Libel and Registration Act, 1881. Accordingly there is no need for a judge's consent when the libel appeared in a book or in a foreign newspaper.

An application under this section is a criminal proceeding within sect. 47 of the Supreme Court of Judicature Act, 1873, and therefore there is no appeal from the judge's decision. (*Ex parte Pulbrook*.)

(1892.)
¹ Q. B. 86.

INQUIRY BEFORE MAGISTRATE.—On the consent of a judge being obtained, a summons will be granted by

a magistrate, and if the defendant does not appear to the summons a warrant may be obtained, or the case may be proceeded with in defendant's absence.

The prosecutor must then prove publication, and the magistrate must decide whether the matter complained of is *primâ facie* libellous; that is, whether it is *primâ facie* defamatory or disorderly, and if the former, that it was not published on a privileged occasion, or if the occasion was privileged, that there was evidence of malice. Then in case the prisoner is "proprietor, publisher, editor, or any person responsible for the publication" of the newspaper in which the alleged libel appeared, the Court "may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate and published without malice, and as to any matter which under this or any other act or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment, and the Court, if of opinion, after hearing such evidence, that there is strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case" (44 & 45 Vict. c. 60, s. 4).

In *Ex parte O'Brien* it was held that this section did not enable a defendant charged with seditious libel to give evidence that such seditious libel was true. As will be observed, the only evidence admissible before the magistrate is such as "might be given by way of defence by the person charged on his trial on indictment." Accordingly, where truth is no defence, evidence of truth should not be received by the magistrate.

¹² L. R. Ir.
29.
(1883.)

On hearing such evidence, the magistrate has three courses open to him. He may dismiss the case, he may

convict summarily, or he may return the defendant for trial.

44 & 45
Vict. c. 60.

22 & 23
Vict. c. 17.

DISMISSAL OF CASE.—By sect. 6 of the Newspaper and Registration Act, 1881, proceedings for libel are within the provisions of the Vexatious Indictments Act. Accordingly, if the magistrate should resolve to dismiss the charge, the prosecutor may, if he choose, have himself bound over to prosecute. In this case, the magistrate is required to transmit the recognizance and depositions to the Court in which such indictment ought to be preferred. Then, if the prosecutor fail to secure a verdict against the defendant he will have to pay all the defendant's costs (30 & 31 Vict. c. 35, s. 2). But that will not be so if the grand jury reject the bill, and there is in consequence no trial.

SUMMARY CONVICTION.—In case the person charged is "proprietor, publisher, editor, or any person responsible" for the publication of the newspaper in which the libel appeared, the magistrate may convict summarily.

44 & 45
Vict. c. 60.

Sect. 5 provides that if the Court of summary jurisdiction is of opinion that though the person charged is shewn to be guilty the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the Court shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" And if such person assents to the case being dealt with summarily, the Court may summarily

convict him and adjudge him to pay a fine not exceeding fifty pounds.

Since the Law of Libel Amendment Act this provision is of very little importance, and is seldom likely to come into operation. If the libel be of a trivial description, the judge at Chambers will probably refuse his consent to a criminal prosecution, and should the judge at Chambers consent, the magistrate will hardly take upon him to declare that trivial which a judge of the High Court thought sufficiently serious to justify a prosecution.

RETURNED FOR TRIAL.—If the magistrate decide to return the prisoner for trial, the prisoner is entitled to bail; if no bail be given the prisoner will be committed to prison until trial.

In every case except that of obscene libel, the prisoner must be returned for trial either to the assizes or the Central Criminal Court. The prosecutor or prisoner may, however, apply to have the case removed by certiorari to the Queen's Bench Division. The grounds on which a certiorari is usually granted are, that a fair and impartial trial cannot be obtained in the Court below, or that difficult questions of law or fact make it desirable that the case should be heard before the High Court or tried by a special jury. When the trial is removed to the Queen's Bench, the proceedings after removal are the same as in the case of a criminal information.

PLEADING TO THE INDICTMENT.—The most important pleas are, Not Guilty and Justification; either or both of which may be pleaded. The first throws the burden of proving all the material allegations in the indictment upon the prosecutor, and the prisoner may raise

any defence to the libel save one—that the libel is true.

To raise that defence, the prisoner must expressly plead justification under sect. 6 of Lord Campbell's Act. That plea, by the words of the statute, must be pleaded "in the manner now required in pleading a justification to an action for defamation." However, there seems to be no power in the Court to order further particulars; if these be insufficient the prosecutor can only demur (*R. v. Hoggans*).

Times, 4th
Nov. 1880.

EVIDENCE.—By sect. 9 of Law of Libel Amendment Act,

"Every person charged with the offence of libel before any Court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent, but not compellable, witnesses on every hearing, at every stage of such charge."

PUNISHMENT.

Usually on verdict of guilty the prisoner is allowed time to file affidavits in mitigation of punishment if he desire it. Meanwhile, he will as a rule be admitted to bail.

At common law a convicted libeller is liable to fine, or imprisonment, or both, and he may also be required to find sureties for his future good behaviour. He cannot, however, be sentenced to hard labour.

By 6 & 7 Vict. c. 96, s. 4, publication of a defamatory libel, knowing it to be false, makes the libeller liable to fine and imprisonment not exceeding two years. Where the charge is merely maliciously publishing, the imprisonment is not to exceed one year (sect. 5).

On conviction of blasphemous libel a prisoner may be

fined and imprisoned indefinitely, and may also be required to give sureties for his good behaviour.

By 14 & 15 Vict. c. 100, s. 29, conviction of obscene libel makes the convict liable to fine and imprisonment indefinitely, with or without hard labour.

For seditious libel the punishment is fine of any amount and imprisonment as a first-class misdemeanant (40 & 41 Vict. c. 21, s. 40) for any period. Sureties for good behaviour may also be required.

By 6 & 7 Vict. c. 96, s. 3, publishing or threatening to publish a libel, etc., for purposes of extortion, renders the convict liable to imprisonment not exceeding three years with or without hard labour.

By 24 & 25 Vict. c. 96, ss. 46 and 47, accusing or threatening to accuse another of an infamous crime for purposes of extortion is felony, punishable with penal servitude for life, or for any term not less than five (now three; 54 & 55 Vict. c. 69, s. 1) years, or with imprisonment with or without hard labour for a period not exceeding two years.

Indictments for defamatory, seditious, or blasphemous libels are not triable at Quarter Sessions (5 & 6 Vict. c. 38, s. 1).

SUMMARY PROCEEDINGS.

OBSCENE LIBELS.—By 20 & 21 Vict. c. 83, large powers of seizure and destruction are given to magistrates on sworn information, shewing that printed matter of an indecent character is kept in any place for the purpose of sale or exhibition for profit. An appeal from the magistrates' decision lies to the Quarter Sessions.

By 5 Geo. 4, c. 83, s. 4, and 1 & 2 Vict. c. 83, s. 2, any person exposing or exhibiting any indecent prints or

pictures in a public place or in a window or house in a public place, is to be deemed a rogue and a vagabond, and punished on summary conviction. It is obvious that under certain circumstances these enactments might apply to prints purporting to be newspapers or parts of newspapers.

Indictments for obscene libel may be returned for trial to Quarter Sessions (5 & 6 Vict. c. 38, s. 1).

CHAPTER VII.

CONTEMPTS.

CONTEMPTS OF PARLIAMENT.—The publication of any matter defamatory of or insulting to either House of Parliament, or reflecting on any member of such House in his character of member, is a contempt of that House, and may be punished by committal. Formerly, this privilege was carried very far, but the tendency of late has been more and more to disregard such contempts, except in very flagrant cases, leaving the conduct of the House to the care of the constituencies and the characters of the members to be vindicated in the ordinary Courts.

CONTEMPTS OF COURT.—It is a contempt to publish concerning Superior Courts of Record any matter reflecting upon the Court itself or any matter referring to the parties who are concerned in causes therein, provided the publication of such matter is calculated to prejudice the public against the parties before the cause is heard (*Roach v. Garvan, Re Read & Hugginson*), or is calculated ² Atk. 469. (1742.) to interfere with the due administration of the law (*In re Martindale*). This rule does not apply to inferior ^(1894.) Courts, the judges and parties in which have only the ³ Ch. 193. ordinary remedies against libellous comments.

The following are Superior Courts of Record:—the House of Lords, the Judicial Committee of the Privy

Council, all the Superior Courts of Common Law and Equity, and Courts of Nisi Prius and Assize. In Ireland, the Superior Courts of Common Law and Equity, and Courts of Assize and Nisi Prius; and in Scotland the Court of Session.

Supra.

36 L. T.
332.
(1877.)

61 L. T.
343.
(1889.)
(1896.)
1 Q. B. 577.

As has already been said, what will be held a contempt of Court depends very much upon the Court before which the matter is brought. As pointed out by Jessell, M.R., in *In re Clements, Republic of Costa Rica v. Erlanger*, the jurisdiction to commit for contempt is practically arbitrary and unlimited, and therefore should be exercised by the judge with the greatest reluctance. This *dictum* has often been approved in principle by distinguished judges (see *Hunt v. Clarke, In re O'Malley*, per Cotton, L.J., and *Reg. v. Payne & Cooper*, per Lord Russell, C.J.); but unfortunately it has not always been followed in practice. Some judges, more especially those of the Chancery Divisions, having occasionally placed so broad an interpretation upon the law of contempts that it is impossible to say beforehand what will in fact be regarded as an infringement of it.

Infra.

Taking attacks upon the Court itself first, such an attack may be a libel upon the judge in his capacity as judge, and yet not be a contempt. The question of libel or no libel is beside the real point. Whether it is libellous or not, it is a contempt only when it is calculated to interfere with the administration of the law (*In re the Bahama Islands*). On the other hand, any disregard of the authority of the Court, though it does not in any way reflect upon the judge, is a contempt provided it satisfies the same criterion. Thus to publish an account of evidence given when the case was heard *in camera* will be a contempt (*In re Martindale*), or to

Infra.

publish the pleadings of one side in a pending action, especially if such pleadings contain matter defamatory of the other (*Bowden v. Russell*), or to criticize affidavits filed in a pending action (*Felkin v. Herbert*), or to publish a petition for winding-up a company when such petition contains charges of fraud (*In re Cheltenham & Swansea Railway Carriage Co.*).

46 L. J. Ch.
414.
(1877.)
9 L. T. 635.
(1863.)
L. R. 8, Eq.
580.
(1869.)

In *In re the Bahama Islands* a local newspaper published an anonymous letter in which the conduct of the Chief Justice of the Bahamas, in publicly declining a present of pine apples on the ground that it was desirable in the interests of justice to do so, was held up to ridicule. The Chief Justice summoned the editor of the paper before him, and on the editor declining to give up the name of the writer of the letter, committed him to prison for contempt. The Governor ordered the prisoner's discharge. The whole matter was then referred to the Judicial Committee of the Privy Council, who, after hearing argument, reported: (1) that the letter referring to the Chief Justice, though libellous, was not a contempt of Court, since it was not calculated to obstruct or interfere with the course of justice, or the due administration of the law; (2) that the editor was not guilty of contempt in refusing to give up the name of the writer, since there was no authority in law to require him to do so; (3) that the royal prerogative extends to the remission of sentences for contempt of Court, and such authority was delegated to the Governor.

(1894.)
3 Ch. 193.

In re Martindale related to the publication of proceedings heard privately before a judge in chambers. A minor had been made by her father a ward of court, and the Court had ordered one Hueffer not to have any communication with her. Hueffer being brought before the Court for a breach of this order, the Court refused to interfere on the ground that before the order was made Hueffer had secretly become the husband of the ward. The hearing of the matter had taken place in the judge's private room. Immediately afterwards, an account of it was prepared by one Perris from information given by Hueffer, and was published in the *Star* newspaper. The account stated that the hearing was private. The same

(1892.)
A. C. 138.

paragraph was inserted in the *Morning*, with this difference, that it did not appear from it that the proceedings were private. This paragraph was copied into other papers. It was clear that the editors of these and of the *Morning* did not know that the proceedings had not taken place in open court. An application to commit for contempt was made against Hueffer, Perris, and the publishers of the *Star* and of the other papers. Hueffer and the publishers of the *Star* apologized. *Held*, that Hueffer and the publishers of the *Star* were guilty of contempt of Court, and must pay the costs of the application; that Perris was guilty too, but as the application against the *Star* covered his part in the transaction the application against him should be dismissed. As to the application against the other papers, it was frivolous, and must be dismissed with costs. North, J., in delivering judgment, said: "The general rule is an excellent one, that legal proceedings should be public. . . . But to this rule certain exceptions are proper and necessary. One ground of exception is, if a public hearing would have the effect of disclosing what it is the whole object of the action to keep concealed, as in *Andrew v. Raeburn* and *Mellor v. Thompson*; or of making known to the world a secret process, as in *Badische Anilin und Soda Fabrik v. Levinstein*. The hearing in private wholly or in part of cases in which public decency and morality require it to be done are also familiar, not only in the Divorce Courts, but also in the ordinary civil and criminal Courts, an instance of the latter being *Malan v. Young*. So also cases relating to lunatics are constantly heard in private; and cases as to wards—see *Ogle v. Brandling*—in order that the lunatic or ward may not be prejudiced; and I cannot conceive a clearer contempt of Court than that a party concerned, or any person, should proceed forthwith to make known to the world the very matter which the Court had deliberately, in the exercise of its discretion, decided ought not to be published. . . . It is said that as the statement that the marriage had taken place was quite true, it could not be a contempt to state that; but if the question of contempt depended upon the truth or untruth of the matter published, it would result in this—that there would be no contempt in an accurate disclosure of what passed *in camera*. . . . There was no contempt in announcing the fact that the ward had

At p. 200.

L. R. 9 Ch.
522.

(1874.)

31 Ch. D.

55.

(1885.)

24 Ch. D.
156.

(1883.)

6 T. L. R.
38.

(1889.)

2 Russ. &

My. 688.

(1831.)

become the wife of Hueffer; the contempt was in purporting to give the public information, though meagre, of what the judge had decided ought not to be disclosed, by determining to hear the case in private and excluding the public."

And see *In re The American Exchange in Europe*.

61 L. T.
502.

(1889.)

Newspaper contempts usually take the form of comments upon actions or prosecutions pending trial. With regard to these it is clear that the Court will interfere, even where there is no attack upon a party to the action or prosecution, if the comments are such as are likely to prejudice the fair hearing of the case (*In re The Pall Mall Gazette*). On the other hand, the fact that the comments amount to an actionable libel upon one of the parties to the pending case, will not be a bar to the application of that party to have the newspaper punished (*Coats v. Chadwick*), nor would the fact that the newspaper has been so punished prevent the party libelled from subsequently suing it in libel. On the other hand, the mere commencement of an action of libel for defamation which is not a contempt of Court will not make it a contempt on the part of the defendant to republish, pending the hearing, the libel complained of in the action, especially if the defence to the libel action is that the libel is true (*Cronmire v. The Daily Bourse, Limited*). This last point is most important, since promoters of bogus companies and others not infrequently commence libel actions with the view, not of having their honesty inquired into, but of preventing timely criticism on their proceedings.

11 T. L. R.
122.
(1894.)

(1894.)
1 Ch. 347.

9 T. L. R.
101.
(1892.)

In *Cronmire v. The Daily Bourse, Limited*, the plaintiff applied for an order to commit the defendant for contempt of court in publishing an article tending to prejudice the fair trial of an action for libel then pending between the plaintiff

Supra.

and defendant. The alleged contempt consisted in a statement in the *Daily Bourse* to the effect that the plaintiff had served the defendant with a writ for damages in a libel action. "Of course," it went on, "Mr. Cronmire has not the slightest intention to bring an action, nor is it in his power to do so. What he wishes to do is to shut our mouth with a five-shilling piece, which we believe to be the cost price of the valuable document which has been served upon us. Mr. Cronmire, makes, however, the reckoning without the host. We shall comment as fully about him as we did before, and certainly as much as the circumstances call for. . . . New evidence is accumulating daily." Counsel for the defendant said that he intended to justify the libel. The Court refused the plaintiff's application.

(1894.)
1 Ch. 347. In *Coats v. Chadwick* the plaintiffs issued a circular "calculated to create a bias against the defendants in the minds of those who receive it, and to deter them from coming forward as witnesses for the defendants." The defendants applied for an injunction, which was granted by Chitty, J., who remarked that "interference with the course of justice by the publication of *ex parte* statements by a party to the action is not less a contempt of court because the statements are libellous, or because the party is prepared to justify the libel. . . . I should not have interfered if the circular had amounted to a mere warning to the trade against infringement or imitation. The plaintiffs are at liberty to warn the trade as much as they like notwithstanding the pendency of this action, but they are bound to refrain during its pendency from public discussion on the merits or demerits of the case."

44 Ch. D.
149.
(1890.) In *In re Crown Bank* the contempt of Court complained of consisted of the following observations contained in the *Star* newspaper, and dealing with the affairs of the Crown Bank, against which a petition for liquidation had been presented:—"The Crown Bank—Letting light in. We have respectfully directed attention to the so-called bank, and we have not hesitated to describe it as a fraudulent concern. Neither Mr. Gilpin, nor any other person connected with it, has thought fit to challenge that description, and we observe with much satisfaction that the matter has now come before the Court. On Saturday a petition for winding-up the bank was discussed in Mr. Justice North's Court. The petition is ordered to stand over until next Saturday, when the chairman of the bank and

Mr. Gilpin are directed to attend for the purpose of being examined. If they are compelled to make a full statement as to the affairs of the bank we shall have some interesting revelations." This was held to be contempt of Court, and the publisher of the *Star* was fined £50. North, J., in delivering judgment, after pointing out that the comments of the *Star* upon the Crown Bank before the petition though they might be libellous could not be contempt of Court, went on: "When with notice that the petition had been presented, the newspaper deliberately took one side in the controversy, and took on itself to foretell what the result would be, in my opinion there was a gross contempt of Court. It was doing what might interfere with the course of justice. Whether it actually would so interfere in any case I do not know."

It must be clear, however, that the comments were calculated to prejudice the pending trial, or the Court will be inclined to treat the application for contempt as frivolous, or at any rate as unnecessary. Mere general statements that a certain matter will shortly be before the Courts, and various mysterious points connected with it cleared up, are usually treated by the Courts as at worst ill-timed or ill-conditioned comments on matters of public interest.

In *Hunt v. Clarke, In re O'Malley*, the facts were as follows: 61 L. T.
The plaintiff Hunt had brought an action against Clarke for 343.
misrepresentation alleged to be contained in the prospectuses 58 L. J.
of certain companies promoted by Clarke—among others the (Q.B.) 490.
Moldacot Royalties Trust, Limited. (1889.)
The *Star* newspaper, when this case appeared in the list for trial, made some comments upon the coming trial, ending with these words: "Mourners over the Moldacot fiasco are likely to hear a little inside history of the business." The defendant Clarke applied to commit O'Malley, the publisher of the *Star*, alleging that this constituted a contempt of Court. The Divisional Court refused to commit. On appeal, the Court of Appeal held that, though the comment amounted technically to a contempt, yet it was

not such a contempt as the Court ought to commit for. Cotton, L.J., in delivering judgment, held that comments upon a party to an action might constitute a contempt which the Court should punish by committal, but to do so it must be such as was calculated to prejudice the judge and jury, and so prevent a fair hearing of the cause. The jurisdiction of a Court to commit was arbitrary and unlimited; and, consequently, should be jealously watched and exercised. Before committal a judge should be convinced that unless he did so the cause cannot be prosecuted to a fair hearing. The appeal was dismissed without costs.

(1896). In *Reg. v. Payne* the applicant had been sub-editor and
 1 Q. B. 577. manager of the *Huntingdon Post*, belonging to the *Huntingdon Post Co.* Shortly after he ceased to be sub-editor he was charged with attempting to set fire to the company's premises, and remanded. Subsequently the charge of arson was dismissed. Meanwhile an article appeared in the paper, entitled "On sale," intimating the newspaper was on sale, and containing a reference to the charge of arson against the applicant, then pending. The article further went on to refer to "an elaborate and prolonged system of fraud" having been practised on the proprietors of the paper. On the charge of arson being dismissed the applicant was charged with larceny and embezzlement, and was returned for trial at the Assizes. Before the trial came on the respondent Cooper purchased the *Huntingdon Post*, and in announcing in the paper his purchase of it, he stated that, owing to most unfortunate circumstances, the company formerly owning it was in liquidation, "the cause of which has to some extent been reported in our columns, and further information on the subject will probably become public after the assizes. . . . Meanwhile it is obviously our duty to make no further reference to the matter." The paper subsequently reported the proceedings at a meeting of the County Council, at which a resolution was passed that the action of the chief constable in obtaining legal assistance for the public in the prosecution of the applicant should be confirmed. The applicant on these grounds applied to have Payne, the writer of the articles, and Cooper, the owner of the paper, committed for contempt of Court. The Court dismissed
 At p. 580. the application with costs. Lord Russell, C.J., said: "I am

of opinion that the application is unfounded, and the order ought to be discharged with costs; but I wish to express the view which I entertain, that applications of this nature have in many cases gone too far. No doubt the power which the Court possesses in such cases is a salutary power, and it ought to be exercised where there is real contempt, but only where there are serious grounds for its exercise. Every libel on a person about to be tried is not necessarily a contempt of Court; but the applicant must shew that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending." Wright, J., agreed, adding: At p. 581. "To justify an application to the Court the publication complained of must be calculated really to interfere with a fair trial, and, if this is not the case, the question does not arise whether the publication is so objectionable in its terms as to call for the interference of the Court. If the publication is found to be likely to interfere with a fair trial, a second question arises, whether, under the circumstances of the case, the jurisdiction which the Court in that case possesses ought to be exercised, not so much for punishment as for preventing similar conduct in the future."

Newspapers are under no obligation to know that litigation is pending as to any particular matter; and if not, in point of fact, knowing of such litigation they publish comments on the matter, they will not be liable in contempt.

In the *Metropolitan Music Hall Company v. Lake* the *Financial Times* published a private circular concerning the affairs of a company in liquidation. On application to commit the editor and printer for contempt of Court, they alleged that when they published the circular in question they were not aware that the company was in liquidation. *Held*, that there was no contempt, persons not being bound to be cognizant of proceedings in Courts of justice. 58 L. J. (Ch.) 513, 60 L. T. 749. (1889.)

Owing to the modern tendency towards writing up sensational crimes in the newspapers, a form of comment

2 T. L. R.
351.
(1886.)

of the most pernicious kind has sprung up, which there seems to be no sufficient machinery to deal with. As has been said, the power to commit for contempt applies only to contempts committed against a Superior Court. Petty sessions is not a Superior Court, and so long as the case is before the magistrates it is hard to see how a newspaper which comments on the case can be guilty of such contempt as will entitle the Queen's Bench to interfere (*In re an Application for Attachment for Contempt*). Yet comments on the antecedents of a prisoner while a charge against him is being investigated by the justices may be the means of preventing his having a fair trial when he is committed to the Assizes or Central Criminal Court. Probably once he is so committed the Court of Queen's Bench, before a judge of which he may be tried, has cognizance of the case, and comments could be summarily prevented or punished, either by the Court of Queen's Bench, or by the judge before whom the case ultimately comes.

ADVERTISEMENTS.—As to comments on pending cases appearing in advertisements, see *supra*, p. 20.

APPEAL.—A contempt of Court which consists in an offence against the law by interfering with or obstructing the administrator of justice is a criminal proceeding, and there is no appeal from the judge's decision.

15 P. & D.
59.
(1890.)

In *O'Shea v. O'Shea and Parnell* the question arose whether judgments in cases of contempt were judgments in a criminal matter or cause within sect. 47 of the Judicature Act of 1873, and from which, therefore, there is no appeal. The Court of Appeal held that they were. Lopes, L.J., in his judgment, says: "There are different kinds of attachment for contempt. One kind of attachment is to enforce obedience to an order

made in a civil action or proceeding, against one of the parties, in respect of something the doing or not doing of which is not a criminal act. That could not be an order in a criminal cause or matter within sect. 47. . . . But there is another kind of attachment which is the subject of an independent application against a person who is not a party to the suit in respect of an act done outside the suit, and which act is criminal. That, I think, is within the words of sect. 47. The application on which the present order was made was an application by the petitioner in the divorce action, in reference to an attempt made by a stranger to the suit to interfere with the administration of justice in the action, but it is made outside the action. The object of the application was to obtain the punishment of the appellant, and the proceeding ended with the order against him. I am clearly of opinion that this order was made in a criminal matter."

PUNISHMENT.—Contempts of Court are punishable by fine or committal to prison, or by both. It is, however, only in extremely serious cases that the Court commits the offender. More frequently the penalty takes the form of a fine ranging from £5 to £100. In trivial cases, especially where the offender apologizes and undertakes not to repeat the offence, payment of the costs of the application is usually thought sufficient to meet the justice of the case.

Parliament has large powers of inflicting fines and corporal punishment for contempts of either House, which powers were formerly freely exercised. Now, however, when it punishes a contempt it invariably inflicts imprisonment merely, and its powers of imprisoning are, and always were, confined to detaining the person guilty of contempt in custody until the end of the session. He must then be discharged; but the House, on reassembling, can, and sometimes, in case of continuing contempts, does, order his recommittal.

PART III.

COLONIAL PRESS LAW.

CONSIDERABLE diversity, as might be expected, is to be found in the laws affecting the press which are in force in the more important English colonies. As regards registration, no enactments at all exist in some of the colonies; others are still dependent upon provisions taken from the older English statutes, now repealed in this country; and a minority have adopted the appropriate sections of the Act of 1881. A still greater difference of treatment will be found in the law of libel. Some of the colonies are still without Libel Acts, others have not yet advanced beyond Lord Campbell's Act, others have embodied in their legislation the later Statutes of 1881 and 1888, while a few have gone so far as to codify the whole of the law of defamation. It is to be noticed, also, that two reforms much debated in this country have already been introduced by many of the colonial legislatures—a statutory provision for security for costs in certain circumstances, and the protection for a limited time of newspaper telegrams.

For the purposes of this chapter, it has seemed most convenient to arrange the colonies into three separate groups—

- (1) Colonies where the Common Law is English.

(2) India, Hong-Kong, and East Asia.

(3) Colonies where the Common Law is Roman-Dutch.

South Africa is, naturally, the most important of the colonies in which Roman-Dutch legal influence predominates, and in this connection an account has been added of the recent press legislation in the South African Republic, as the majority of the journalists to whom those very stringent statutes apply are British subjects.

(1.) *COLONIES WHERE THE COMMON LAW IS ENGLISH.*

In the colonies considered under this head, which comprises the two great groups of self-governing colonies in North America and in Australasia, as well as a number of Crown colonies, the Courts, in the absence of statutory enactments, are guided by the common law of England.

CANADA.

REGISTRATION.—So far as can be gathered from the various statute books, Registration Acts exist in only two of the provinces which make up the Dominion—Quebec and Manitoba. The two Acts are substantially identical, and provide for the making and filing of affidavits by the printer and publisher, the renewal of the same on change of proprietor, and for an imprint.

Revised
Statutes of
Quebec,
2924–2938.
The Re-
vised
Statutes of
Manitoba,
c. 107.

LIBEL.—The law of criminal libel is the same for the whole Dominion, and is contained in Part XXIII. of the Criminal Code, 1892. A defamatory libel is defined as “matter published without legal justification or excuse, likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or

Appendix,
p. 386.

designed to insult the person to whom it is published." Most of the subsequent provisions of the Code are substantially identical with English law, but attention may be called to one or two sections.

Sect. 292 runs as follows :—

No one commits an offence by publishing any defamatory matter which he, on reasonable grounds, believes to be true, and which is relevant to any subject of public interest, the public discussion of which is for the public benefit.

This would seem to be a wider provision than any contained in English law. See *Peters v. Bradlaugh*, *supra*, p. 188.

The criminal responsibility for libel of newspaper proprietors is dealt with in sect. 297 :—

Every proprietor of any newspaper is presumed to be criminally responsible for defamatory matter inserted and published therein, but such presumption may be rebutted by proof that the particular defamatory matter was inserted in such newspaper without such proprietor's cognizance, and without negligence on his part.

General authority given to the person actually inserting such defamatory matter to manage or conduct, as editor or otherwise, such newspaper, and to insert therein what he in his discretion thinks fit, shall not be negligence within this section unless it is proved that the proprietor, when originally giving such general authority, meant that it should extend to inserting and publishing defamatory matter, or continued such general authority knowing that it had been exercised by inserting defamatory matter in any number or part of such newspaper.

Strictly interpreted, the last clause of this section would fix the proprietor with criminal liability for a libel contained in his newspaper, if to his knowledge the editor had only *once* before allowed a libel to appear. This is more stringent than the English law, as

expounded by Cockburn, C.J., in *R. v. Holbrook and others*, *supra*, p. 234.

As regards the law of civil libel, there is no statute applicable throughout the whole Dominion, but most of the provincial legislatures have passed enactments dealing with the subject. In Quebec and Nova Scotia, however, no such enactments exist, and there is consequently no statutory privilege, but the Courts are guided in their decisions by the principles of the English common law.

Ontario.—C. 57 of the Revised Statutes of Ontario, vol. i., deals with libel and slander. The definition of "newspaper" is identical with the definition in the English Act of 1881. Reports of judicial proceedings and of public meetings are privileged as in England, but comments on the former are not privileged. Sects. 1 and 2 (the unrepealed portions) of Lord Campbell's Act are embodied, and defendant may pay money into Court as amends. In an action for libel in a newspaper, the plaintiff shall recover actual damages only, if it appears that the article was published in good faith and that there was reasonable ground to believe that the publication was for the public benefit, and if it did not involve a criminal charge, and if it appears that the publication took place in mistake or misapprehension of the facts, and that a full and fair retraction was published, provided that the provisions of the Act shall not apply to the case of any libel against any candidate for public office, unless the retraction is made editorially, in a conspicuous manner, at least five days before the election.

By sect. 9 defendant may at any time after the filing of the statement of claim apply to the Court or a judge for

security for costs, upon notice to the plaintiff and an affidavit by the defendant shewing the nature of the action, and shewing that the plaintiff is not possessed of property sufficient for the payment of costs, and that the defendant has a good defence, and that the matter complained of was published in good faith, or that the grounds of action are trivial and frivolous. But where the libel involves a criminal charge the defendant shall not be entitled to such security, unless he satisfies the Court or the judge that the action is trivial or frivolous, or that the several circumstances (above stated) which entitle the defendant to have the damages restricted to actual damages appear to exist.

Statutes of
Ontario, 57
Vict. c. 27.

A further Act dealing with libel was passed in 1894. Sects. 3 and 5 are to the same effect as sects. 6 and 5 respectively of the English Act of 1888. By sect. 4, every action for libel in a newspaper shall be commenced within three months after the publication has come to the notice of the person defamed, but such an action may include a claim for other libels published in the same paper within a year. By sect. 6, in an action for the publication of defamatory matter communicated in writing by any person to a newspaper, the defendant may at any stage, upon notice and an affidavit verifying the facts, apply to a judge in chambers for an order joining such person as a defendant; and the defendant charged with publication may claim in the action against the defendant so joined any remedy or relief which he may be entitled to in law. But this section shall not apply when the defamatory matter was known by the defendant to be untrue, or was contained in an anonymous contribution.

By sect. 7 there shall be no appeal from an order for security for costs, except when such order is made by a

local judge, in which case an appeal will lie to a judge of the High Court.

Manitoba.—C. 85 of the Revised Statutes of Manitoba, 1891, vol. i., is practically identical with c. 57 of the Revised Statutes of Ontario, vol. i. (*supra*). More specific details, however, as to notice are given in sect. 5, which is to the effect that no action shall lie for a newspaper libel unless and until the plaintiff has given to the defendant notice in writing specifying the language complained of, for three clear days in the case of a daily newspaper, and for ten clear days in the case of a weekly paper, in order to give the defendant an opportunity of publishing a full apology; and if a full apology was published before the commencement of the action, the plaintiff shall not recover without proving special or actual damage. There is the same provision as to security for costs.

British Columbia.—The Defamation Act, 1891, is almost identical with c. 57 of the Revised Statutes of Ontario, but the definition of “newspaper” is so worded as to include monthly publications. There is the same privilege, and the same provision for security for costs.

New Brunswick.—In the Libel Act, 1894, “newspaper” includes monthly publications. In case of a newspaper libel, notice must be given to the defendant, specifying the language complained of, for at least five clear days in case of a daily paper, and fourteen clear days in case of a weekly or other paper (sect. 4). Where the defendant has pleaded not guilty only, or has suffered judgment by default, or where judgment has been given against him on demurrer, he may give evidence in mitigation that he

published a withdrawal of the libel and an apology in the same newspaper, or made or offered a printed or written apology to the plaintiff (sect. 5). By sect. 11 no publisher of a newspaper shall be entitled to benefit by the Act unless he publishes his name as publisher in a conspicuous place in the paper. The other sections provide, in the usual way, for privilege in the case of reports of public meetings (but not of judicial proceedings), for a general verdict of guilty or not guilty, for absence of malice and gross negligence, and for the consolidation of actions.

Statutes of Prince Edward Island, 28 Vict. c. 25. *Prince Edward Island*.—The Libel Act, 1865, is Lord Campbell's Act, sects. 1 to 7.

JAMAICA.

1867, No. 18. REGISTRATION.—By an Ordinance of 1867, the proprietor of every newspaper must take out a licence, and sign a declaration stating his business and where it is carried on.

14 Vict. c. 34. 1896, No. 25. Appendix. LIBEL.—Lord Campbell's Act was adopted in 1850. But a new Libel Act was passed in 1896, which is made up of sects. 3, 4, and 5 of the English Act of 1881, and sects. 3, 4, 5, 6, 7, and 9 of the English Act of 1888, *mutatis mutandis*. There is only one new feature introduced—reports of "religious services" enjoy the same privilege as reports of public meetings.

BRITISH GUIANA.

REGISTRATION.—Ordinance 26 of 1839 contains the old regulations for a declaration by the printer and publisher, for fresh declarations in certain cases, for an

imprint, and for the entering into of recognizances as security for the payment of any fine or penalty inflicted for the punishment of any seditious or blasphemous libel.

LIBEL.—Ordinance 22 of 1846 is in the main Lord Campbell's Act with sect. 2 of the Amending Act. 8 & 9 Vict. Defendant may plead the truth by way of justification ^{c. 75.} in the same manner as he might do in any like action in any Court of Common Law in England.

NEW SOUTH WALES.

REGISTRATION.—The Newspaper Act of 1827 is based ^{8 Geo. 4,} on the old English Acts passed in the reign of George III., ^{No. 2.} and contains many provisions which have long dis- ^{38 Geo. 3,} appeared from English law. It provides for the making ^{c. 78.} of an affidavit containing specified particulars by the ^{60 Geo. 3,} editor, printer, publisher, and all the proprietors of every ^{and 1 Geo.} newspaper, which affidavit must be renewed on any ^{4, c. 8,} change in any of the particulars. The name and address ^{& c. 9.} of the editor, printer, publisher, and proprietor must be printed in some part of every newspaper; and the editor, printer, and publisher must enter into recognizances (with sureties), as security for the payment of any fine or penalty inflicted by reason of any conviction for the printing or publishing of a blasphemous or seditious libel. Sect. 20 originally provided that persons convicted a second time of blasphemous or seditious libels might be banished from the colony for such term of years as the Court should order, but this section was repealed in 1842. ^{5 Vict.,} The Act has also been amended, but only in regard to ^{No. 19,} the arrangement of details, by a series of Acts in 1838, ^{s. 1.} 1850, and 1853. ^{2 Vict.,} ^{No. 20.} ^{13 Vict.,} ^{No. 47.} ^{16 Vict.,} ^{No. 37.}

11 Vict.,
No. 13.

LIBEL. The Libel Act of 1847 includes the provisions of Lord Campbell's Act, with a few other sections mostly derived from older English enactments. By sect. 4, the truth of the matters charged is no defence unless it was for the public benefit that such matters should be published. By sect. 5 privilege is extended to faithful and accurate reports of any judicial proceedings, the same not being of a preliminary character, provided that it shall not be lawful to publish matter of an obscene or blasphemous nature, nor any judicial proceedings which may not be concluded, and which the presiding judge may pronounce it improper to publish at their then stage. This is, of course, a very restricted privilege, and is the only statutory enactment on the subject in the law of New South Wales. By sect. 13, plaintiff, having obtained judgment, may levy costs, etc., out of the types, presses, and printing materials used in printing the defamatory article, as well as out of the property of the defendant; and, by sect. 15, the benefits of the Act are not to extend to any defendant who has not complied with all the requirements of the laws for regulating the printing and publication of newspapers.

VICTORIA.

54 Vict.,
No. 1130.

REGISTRATION.—Part II. of the Printers and Newspapers Act, 1890, deals with the Registration of Newspapers. When any person desires to publish a newspaper, or when, in any newspaper already registered, a change is made in any of the required particulars, or upon written requisition of the Chief Secretary, the publisher shall deposit with the Registrar-General an affidavit, signed by the proprietors, and printers, and publishers, which affidavit shall be conclusive evidence against the

parties who signed it. The Act also contains provisions for imprint, for the register of affidavits being open to the public, and for the lodging of disclaiming affidavits.

Sects. 16-20 are based on the old Acts of William IV. 6 & 7 Wm. 4, c. 76. and George III., and provide, *inter alia*, for the entering 60 Geo. 3 into of recognizances (with sureties) by the printer and & 1 Geo. 4, publisher, as under the New South Wales Act. c. 9.

By the Printers and Newspapers Act, 1895, when a *Supra.* limited company is the proprietor of a newspaper, the 59 Vict., affidavit may be signed by the secretary, manager, or No. 1406. managing director.

LIBEL.—Part I. of the Wrongs Act, 1890, is devoted 54 Vict., to Defamatory Words and Libel. It consists of Lord No. 1160. Campbell's Act, with an additional section (3) to the effect that no action is maintainable against any person for faithfully and accurately reporting proceedings in any legally constituted Court, provided that the matter published is not obscene or blasphemous, and that in any Court, the proceedings in which have not concluded, the president does not pronounce it improper to publish the proceedings at their then stage. This section finds its English equivalent in sect. 3 of the Law of Libel Amendment Act, 1888. Beyond this, there seems to be no 51 & 52 Vict. c. 64. statutory privilege in Victorian law.

QUEENSLAND.

REGISTRATION.—The Newspaper Act, 1827, is identical with the New South Wales Act, and was similarly amended.

It was further amended in 1841, by a provision to the 5 Vict., effect that the names of the editor or editors, and pro- No. 19. prietor or proprietors, need not appear on the imprint, nor the editor's name on the affidavit of registration.

LIBEL.—The Defamation Act, 1889, amounts to a
 Appendix. codification of the English common law, together with
 various provisions from English statutes. No distinction
 is made between libel and slander, both being included
 in the definition of defamation. “Absolute protection”
 is extended to parliamentary speeches, petitions to
 parliament, parliamentary papers, judicial proceedings,
 and reports of official inquiries. “Reports of matters
 of public interest,” if made in good faith for the infor-
 mation of the public—an expression which is clearly
 defined—are privileged in some cases. Sect. 14 deals
 with “fair comment,” which is, in all cases, a question
 for the jury. By sect. 16, it is lawful to publish defama-
 tory matter, provided it is true, and that the publication
 of it is for the public benefit. The cases in which the
 publication of defamatory matter may be “lawfully
 excused” are set out in sect. 17. The rest of the Act
 is mainly founded upon English statutory enactments,
 and calls for no special comment.

[This Act is by far the most elaborate and compre-
 hensive of the colonial statutes on the subject, and
 contains matter apparently derived from Scots law, as
 well as from English; and as it also embodies some
 original experiments in the way of the reform of the law
 of defamation, it affords an interesting study in com-
 parative legislation. Its more important sections are
 given in full in the Appendix (p. 375)].

SOUTH AUSTRALIA.

36 & 37
 Vict., No.
 18.

REGISTRATION.—The Imprint Act of 1863, imposes a
 penalty of £5 on any printer who does not print his
 name and place of abode or business on every paper
 issued by him: the same penalty applies to any person

publishing such paper. It is further provided that every printer shall keep a copy of every paper printed by him, with the name and address of his employer upon it.

This Act was amended in 1881, but only as regards the recovery of penalties and proceedings. 44 & 45
Vict., No.
209.

There does not appear to be any Registration Act in force in the colony.

LIBEL.—Lord Campbell's Act was adopted in 1846. 10 Vict.,
No. 17.
The Law of Libel Amendment Act, 1895, includes 58 & 59.
sects. 3, 5 (first paragraph), 6 and 7 of the English Act Vict., No.
646.
of 1888. The definition of "newspaper" is identical 51 & 52
with that in the English Act of 1881, except that the Vict. c. 64.
intervals are extended to thirty-one days, so as to include 44 & 45
Vict. c. 60.
monthly publications. By sect. 4, fair and accurate reports are privileged (subject to the provisos contained in the corresponding section of the English Act of 1888) of the proceedings of "any meeting of a municipal corporation or district council, school board of advice, board of health, board or local authority, formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, royal commissions, select committees of either House of Parliament, meetings of shareholders in any bank or incorporated company," and "the publication at the request of any Government office or department, minister of the Crown, or commissioner of police, of any notice or report issued by them for the information of the public" is also privileged. Sect. 5 provides for the punishment, on summary conviction, of those responsible for the publication of unfair and inaccurate reports, and enacts that any person laying any information under this section shall be deemed to have waived

all other remedies, both civil and criminal, against the same defendant in respect of the same report. An appeal lies to the local Court of Adelaide of Full Jurisdiction. Sect. 8 is identical with sect. 4 of the English Act of Appendix. 1881, and sects. 11 & 12 correspond to sects. 38 & 39 of the Queensland Act of 1889.

36 Vict.,
No. 10.

COPYRIGHT.—By the Telegram Copyright Act, 1872, newspaper telegrams, or the substance thereof, or any extract therefrom, from any place outside the Australian colonies, are protected for twenty-four hours from the time of their first publication, unless published with the consent in writing of the receiver or his agent. The period of protection is not to extend beyond thirty-six hours from the time of the receipt at the telegraph office of the telegrams (Sundays excepted). The penalty, on summary conviction, may vary from £10 to £100 for the first offence, and, for the second, from £50 to £200.

Telegrams to be protected must be headed “By Submarine Telegraph,” and the day and hour of their receipt must also be stated. During the period of protection, no protected intelligence shall be transmitted to any person outside South Australia except by the original receiver.

Nothing in the Act is to extend to any document published by the Government printer, or to the report of any proceedings in either House of Parliament.

WEST AUSTRALIA.

48 Vict.,
No. 12.
44 & 45
Vict. c. 60.

REGISTRATION.—The Newspaper Libel and Registration Act, 1884, is, with the necessary changes, identical with the English Act of 1881. There is, however, an additional section (16), to the effect that the printer of every news-

paper shall print his name and address on every paper, and, within twenty-four hours of publication, send to the Colonial Secretary one copy of such paper, signed by the printer, and containing the name and address of his employer.

LIBEL.—Lord Campbell's Act was adopted in 1846 (10 Vict., No. 8). The Newspaper Libel and Registration Act, 1884, Amendment Act, 1888, contains three provisions worthy of special notice. By sect. 3 security for costs may be ordered by the Court or a Judge in Chambers, to be given by the plaintiff on the filing of an affidavit by the defendant that the plaintiff is an uncertificated bankrupt, or that within the last twelve months he liquidated or compounded with his creditors, or that he is without fixed domicile, or that, in the belief of the defendant and some other person of repute, he is without visible means of paying costs. By sect. 4 the plaintiff, if the action is against the proprietor, publisher, editor, or printer of a newspaper, or some person responsible for its publication, will be non-suited unless he gives evidence in his own behalf. And by sect. 6, fair and accurate reports of judicial proceedings, State or municipal ceremonials, political or municipal meetings, and public meetings are *absolutely* privileged. It is immaterial whether admission to a public meeting be free, or on payment, or by ticket or otherwise.

COPYRIGHT.—By the Telegraph Copyright Act, 1872, newspaper telegrams from outside the colony are protected for seventy-two hours from the time of their first publication, unless published with the consent, in writing, of the receiver or his agent. The period of protection is

not to extend beyond eighty hours from the time of the receipt, at the telegraph office, of the telegrams, and the publication of any part or the substance of the telegram is to be deemed a publication within the meaning of the Act. The penalty, on summary conviction, may vary from £5 to £50 for the first offence, and, for the second, from £50 to £100.

Such telegrams, to be protected, must be headed, "By Electric Telegraph," and the day and hour of receipt must also be stated.

TASMANIA.

9 Geo. 4,
No. 7.
Supra.
8 Wm. 4,
No. 11. REGISTRATION.—The Newspaper Act, 1828, is identical with the New South Wales Act. Some amendments were introduced in 1837, the most important of which were that the amount of the recognizances were raised to £400, and that they were to be security, not only for any fine inflicted for a blasphemous or seditious libel, but also for damages and costs in any libel action.

59 Vict.,
No. 11.
Appendix. LIBEL.—The law as to criminal libels is regulated by the Defamation Act of 1895, which is simply the Queen's-land Act of 1889 with a few unimportant sections omitted.

55 Vict.,
No. 49. COPYRIGHT.—By the Newspaper Copyright Act, 1891, all newspaper telegrams from any place outside or within the colony are protected for forty-eight hours from the time of their first publication, unless republished with the consent of the proprietor of the newspaper in which they originally appeared. The penalty, on summary conviction, may not be less than £20 or more than £100.

NEW ZEALAND.

REGISTRATION.—The Newspaper Act of 1868 is practically identical, in its provisions, with the Victorian Act of 1890, except for some variations in the penalties, and was similarly amended in 1892.

32 Vict.,
No. 17.

Supra.

56 Vict.,
No. 50.

8 Vict.,
No. 8.

LIBEL.—Lord Campbell's Act was adopted in 1844.

48 Vict.,
No. 32.

COPYRIGHT.—By Part II. of the Electric Lines Act, 1884, all newspaper telegrams from outside the colony are protected for a period of eighteen hours from the time of their first publication, unless published with the consent of the receiver or his agent. Publication of the substance or any part of such telegrams is to be deemed a publication within the meaning of the Act. The period of protection shall not extend beyond twenty-four hours, or, if Sunday intervenes, forty-eight hours from the receipt, at the telegraph office, of the telegrams. Telegrams, to be protected, must be headed "Copyright."

(2.) INDIA, HONG-KONG, AND EAST ASIA.

No distinction is now made by statute between English and native newspapers in India. They are subject to the same law of Registration, of Criminal Libel, and of Sedition. The law of Sedition is now seldom exercised in England, but in India it is, and will probably long continue, a living force, and the enactments which have lately been passed to amend and strengthen it are deserving of careful study.

REGISTRATION.—Part II. of Act XXV. of 1867 provides for an imprint, and for a declaration, with prescribed

particulars, by the printer and publisher of every periodical, a copy of which declaration shall be deposited in the High Court of Justice or other High Court, and shall be open to inspection on payment of a fee. Provision is also made for a disclaiming declaration, but no recognizances have to be entered into.

LIBEL.—Chapter XXI. of the Indian Penal Code
Appendix. deals with Defamation. The distinction between Libel and Slander is abolished, and it may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives; otherwise the chapter contains no provision which is unknown to English law.

SEDITION.—By a recent Act the law of Sedition has been modified and amended with a view to greater clearness. Sect. 124A of the Original Penal Code ran as follows :—

Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term, which may extend to three years, to which fine may be added, or with fine.

Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.

The judges who from time to time have had to try cases of sedition found it a difficult task to interpret this "explanation," and by the Act mentioned above, sect. 124A of the Penal Code has accordingly been repealed, and the following section substituted for it:—

Whoever by words, either spoken or written, or by signs, No. 4 of
or by visible representation, or otherwise, brings or attempts 1898.
to bring into hatred or contempt, or excites or attempts to
excite disaffection towards, Her Majesty or the Government
established by law in British India, shall be punished with
transportation for life or any shorter term, to which fine may
be added, or with imprisonment which may extend to three
years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.

In order to guard still further against the dissemination of sedition in newspapers, the new Code of Criminal Procedure, 1898, contains the following section (108):—

Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

- (a) Any seditious matter, that is to say, any matter the publication of which is punishable under sect. 124A of the Indian Penal Code, or
- (b) Any matter the publication of which is punishable under sect. 153A of the Indian Penal Code, or
- (c) Any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, or printed or published in conformity with, the Press and Registration of Books Act, 1867, except by the order or under the authority of the Governor-General in Council, or the Local Government, or some office empowered by the Governor-General in Council in this behalf.

By the same Act the following additional section has been inserted after sect. 153 of the Penal Code :—

Whoever by words, either spoken, written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

And by the same Act, sect. 505 of the Penal Code has been repealed, and the following section substituted for it :—

Whoever makes, publishes or circulates any statement, rumour or report,—

- (a) With intent to cause, or which is likely to cause, any officer, soldier or sailor in the army or navy of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such ; or
- (b) With intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity ; or
- (c) With intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community ;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true, and makes, publishes or circulates it without any such intent as aforesaid.

HONG-KONG.

REGISTRATION.—The Printers and Publishers Ordinance, 1886, comprises, *mutatis mutandis*, sects. 7, 10, 11, 12, 13, 15, 16, and 18 of the English Act of 1881, as well as some of the provisions of the older English Acts. The printer and publisher of every newspaper must appear before the registrar and subscribe the prescribed declaration, and a new declaration is necessary as often as the place of printing or publication is changed, and on every change in the proprietorship. Sects. 12 and 25 are to the same effect as sects. 29 and 34 of 39 Geo. 3, c. 79, except that in the latter case the limitation of the action is extended to six months. Sect. 13

No. 6 of
1886.

44 & 45
Vict. c. 60.

Appendix,
p. 362.

Appendix, is identical with sect. 2 of 2 and 3 Vict. c. 12. The Act
p. 363. also provides for the giving of a bond (with sureties) by the printer and publisher as security for the payment of any fine or penalty and costs incurred in *any* action for libel.

Sect. 4, sub-sect. (3) was repealed by Ordinance 4 of 1891, and re-enacted as follows: "As often as the printer or publisher, who shall have made the aforesaid declaration, shall leave the colony permanently or temporarily, or shall, although in the colony, be imprisoned or otherwise incapacitated from being, or shall cease to be the actual printer or publisher for the time being, a declaration from the actual printer or publisher resident within the colony shall be necessary."

1887, LIBEL.—The Defamation and Libel Ordinance, 1887,
No. 5. includes Lord Campbell's Act, the first three sections
Appendix. (*mutatis mutandis*) of 3 and 4 Vict. c. 9, and sects. 2, 3, 4, and 5 of the English Act of 1881.

EAST ASIA.

English newspapers published at Shanghai and Bangkok are subject to consular jurisdiction, and are governed by English law, modified in certain cases by special regulations. The important English papers published at Yokohama and Hiogo, which have hitherto enjoyed the same privilege of extra-territoriality, will in future be subject to the ordinary law of Japan in virtue of the treaty between Great Britain and Japan which comes into force in the present year, and by which consular jurisdiction in such matters is entirely abolished. Much uncertainty prevails as to the effect of this change, one section of the Japanese Law prohibiting foreigners

altogether from owning newspapers. The question is, at the time of writing (June, 1898), the subject of correspondence between the two Governments.

(3.) COLONIES WHERE THE COMMON LAW IS
ROMAN-DUTCH.

In Ceylon, the Cape of Good Hope, and Natal, the common law is still Roman-Dutch—that is to say, the Courts, in the absence of statutory enactments dealing with the matter in issue, fall back upon the precepts of the Roman-Dutch law. But when nothing to the point can be found in the Roman-Dutch authorities, they then have recourse to the principles of the English common law. Roman-Dutch law was formulated long before the era of newspapers, and, moreover, provides no criminal prosecution for defamation, except in aggravated cases, as when high officers of state are defamed (*scandalum magnatum*). As a rule, the Supreme Courts have condemned the application of the Roman-Dutch precepts, as obsolete, in actions for libel, and though it is open to counsel to quote from the old authorities, it may be said that the Courts are mainly guided, where there are no local statutes in force, by the English common law (*Davis v. Shepstone*, 11 A.C. 187 (1886)). The procedure of the English Courts and the decisions of English judges in analogous cases are always cited, and the English law of evidence prevails.

CEYLON.

REGISTRATION.—Ordinance No. 5 of 1839 contains the usual provisions for a declaration by the printers, publishers, and proprietors of every newspaper, and for an imprint, but no recognizances are necessary. Ord. No. 5
of 1839.

Ord. No. 2 of 1883. LIBEL.—Chapter XIX. of the Penal Code, which treats of Defamation, is identical with the corresponding Chapter (XXI.) of the Indian Code.

Appendix,
p. 373.

Infra. SEDITION.—Sect. 120 of the Penal Code is much wider in its terms than sect. 124A of the Indian Code, which has been repealed by an Act of 1898. It runs as follows:—

Whoever by words, either spoken or intended to be read, or by signs, or by visible representations, or otherwise, excites or attempts to excite feelings of disaffection to the Queen or to the Government established by law in Ceylon, or excites or attempts to excite hatred to or contempt of the administration of justice, or excites or attempts to excite the Queen's subjects to procure, otherwise than by lawful means, the alteration of any matter by law established, or to raise discontent or disaffection amongst the Queen's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects, shall be punished with simple imprisonment for a term which may extend to two years.

Explanation.—It is not an offence under this section by intending (*sic*) to show that the Queen or the Local Government have been misled or mistaken in measures, or to point out errors or defects in the Government or any part of it, or in the administration of justice, with a view to the reformation of such alleged errors or defects, or to excite the Queen's subjects to attempt to procure by lawful means the alteration of any matter by law established, or to point out in order to their removal matters which are producing or have a tendency to produce feelings of hatred or ill-will between different classes of the Queen's subjects. No prosecution can be instituted under this section except by, or with the written authority of the Attorney-General.

CAPE OF GOOD HOPE.

No. 208 of 1859. REGISTRATION.—The old Registration Act was repealed in 1859, and provision was made that the name

and address of the printer and the place where printed should be inserted in every newspaper. By the Newspaper Registration Act, 1884, all newspapers must be registered in the office of the civil commissioner of the division in which they are published, together with the name and address of the proprietor, printer, and publisher.

LIBEL.—The Libel Act, 1882, includes sects. 3, 6 (abridged), 7, and 8 (second paragraph) of Lord Campbell's Act. The other sections provide that any person charged with the crime of publishing a defamatory libel may, under the plea of not guilty, set up any defence (save as thereafter excepted) which might be pleaded in answer to a civil action for the same libel; that the plea of justification must be in writing, and signed by the defendant or his counsel or attorney, and must give the particulars required by sect. 6 of Lord Campbell's Act, and that a copy shall be served upon the prosecutor; that the fiat of the public prosecutor is necessary before a private prosecution can be instituted; that no Court of a resident magistrate shall have jurisdiction unless the public prosecutor has remitted the case; and that the period of limitation shall be six months.

Sect. 1 of the Amendment Act, 1886, is the first paragraph of sect. 8 of Lord Campbell's Act, with the addition of "at the discretion of the judge or magistrate," and by sect. 2, no case is to be remitted to a resident magistrate by the public prosecutor until the defendant has had an opportunity of demanding a trial before a Superior Court.

COPYRIGHT.—By the Telegraphic Messages Copyright Act, 1880.

Act, 1880, all newspaper telegrams from outside the colony are protected for one hundred and twenty-four hours from the time of their first publication, unless published with the consent in writing of the receiver or his agent. The period of protection is not to exceed one hundred and thirty hours from the receipt at the telegraph office of the telegrams (Sundays excepted), and the publication of any part or the substance of such telegrams is to be deemed a publication within the meaning of the Act. The penalty, on summary conviction, may be £20 or less for the first offence, and for the second £40 or less. Telegrams to be protected must be headed "By Telegraph," and the day and hour of receipt must also be stated.

Any person other than the receiver transmitting such telegrams during the period of protection is liable to the same penalties.

NATAL.

1858,
No. 9.

REGISTRATION.—By the Newspaper Act of 1858 a declaration must be made by the printer, publisher, and proprietor of every newspaper before a resident magistrate, who shall file copies of all such declarations and send the originals to the Colonial Secretary. There are the usual provisions for disclaiming declarations, and for the entering into of recognizances by the printer and publisher. The names of the printer and publisher must be printed at the end of every newspaper, and one copy of each issue must be signed by them and transmitted to the Colonial Secretary.

LIBEL.—There is no statute dealing with libel in force in the colony.

COPYRIGHT.—By the Telegraphic Messages Copyright ^{No. 36 of 1895.} Act, 1895, all telegrams received at any telegraph office in the colony for the purpose of publication in a newspaper are protected for fifty hours from the time of their first publication, unless published with the consent in writing of the receiver or his agent. The period of protection is not to exceed seventy-two hours from the receipt of the telegram (Sundays excepted), and the publication of any extract from or the substance of such telegrams is to be deemed a publication within the meaning of the Act. The penalty for the first offence is a fine not exceeding £20, or in default imprisonment not exceeding three months, and for the second offence the penalty is doubled. Telegrams to be protected must be headed "By Telegraph" or "Telegrams," and the day of despatch must be stated.

During the period of protection no protected telegram must be transmitted to any person for publication in behalf of any one other than the original receiver under pain of the above penalties. Messages transmitted by pigeon and other special despatch are similarly protected.

SOUTH AFRICAN REPUBLIC.

The most noticeable feature in the later press laws of the Transvaal is the practically absolute power which is given to the "State President" and his Council. The earlier laws were of a comparatively moderate and reasonable character, being based on Dutch precedents, but the legislation of 1896 introduces the most stringent provisions of the German Code, adding thereto some provisions unknown even in Germany. By the Libel Law of 1896 the President may, with the advice and

consent of the Executive Council, prohibit either entirely or for a certain time the publication of a "dangerous" newspaper; and by the Alien Expulsion Bill of the same year, he may, with the same advice and consent, expel from the State any alien who, in writing, incites to disobedience or transgression of the law, "by which public peace or order is or can be endangered." It is impossible to forecast what interpretation the Transvaal Courts as at present constituted may give to these Acts, so it is best simply to set out, without comment, the more important portions of the two Acts of 1896, and of the preceding Act of 1893, in the authorized English translation.

The Registration and Libel Law of 1893 still remains in force, though Art. 3, being apparently meaningless, was in 1895 declared inoperative by the High Court.

Art. 3. The printer or printers, and publisher or publishers of any newspaper, etc., containing articles inciting to riot or sedition, or slander, insult, or attack upon any one's character, are responsible for those articles, and shall, by contravention of this Article, be punished with imprisonment not exceeding twelve months, with or without hard labour.

Art. 4. He who unjustly attacks in writing the honour or good name of any one, whether in a newspaper or in whatever other form of writing, by alleging a positive fact, with the intent of injuring the person or persons concerned, and to give publicity to such fact, will be punished with a fine not exceeding £150, or with imprisonment not exceeding six months, with or without hard labour, jointly or separately.

LIBEL ACT, 1896.—Without any repeal or reference to former enactments a new Libel Law was passed in 1896.

Art. 3. All publications such as periodicals, newspapers, and reviews must contain in each number of every issue the name and address of the responsible editor, whilst all articles

(or pieces) of a political or personal nature which appear therein must be signed by the writer with his true and full name.

Art. 4. Within the period of one month after this law becomes of force the publisher of any periodical publication already in existence in the Republic must send in to the State Attorney a written declaration under oath containing a statement of the name of such periodical and of the name of the responsible editor, the publisher, and the owner. After this law becomes of force no newly appearing periodical publication can be issued without a similar declaration to the State Attorney.

Art. 5. The State President has at all times the right, with the advice and consent of the Executive Council, to prohibit either entirely or for a certain time the dissemination of printed and published matter of which the contents, in his opinion, are in conflict with the well-being or dangerous to the order and peace of the Republic.

Art. 6. He who by means of any printed matter makes himself guilty of libel, slander, or public attack on character shall be punished with a monetary fine not exceeding £250 or imprisonment not exceeding one year.

He who by means of any printed matter makes himself guilty of inciting to any criminal act or offers to procure advice, opportunity, or means to commit any punishable act, shall be punished with a fine not exceeding £500, or imprisonment, with or without hard labour, not exceeding two years, or banishment from the State for a period not exceeding two years.

Art. 7. Wherever a punishable act is committed by means of any periodically printed matter, the responsible editor, although he is not the writer of the incriminated piece or article, may be punished as perpetrator.

Art. 8. Whenever a punishable act is committed by means of any printed matter published within this Republic—

(A) The publisher,

(B) The printer,

(C) Whoever has disseminated the printed matter in the exercise of his trade, in so far as they are not also punishable as perpetrators or accomplices, shall be

punished for negligence with a money fine not exceeding £200 or imprisonment not exceeding one year, unless they can indicate that they have exercised every precaution which may reasonably be demanded from them, or that there existed circumstances which made it impossible for them to do so.

The said persons, if they have also complied with every one of the provisions of this law, shall be unpunishable, if upon the first demand of, or on behalf of, the State Attorney, they point out some one as the writer, or as one who occupies a position superior to their own who is found within the jurisdiction of the judicial authorities, or, in case he is already dead, was residing there at the time of the dissemination.

Art. 9. With a money fine not exceeding £50, or imprisonment not exceeding six months, shall be punished—

(A) The printer and publisher for contravention of Art. 3;

(B) The responsible editor and the publisher for contravention of Art. 2;

(C) The publisher for contravention of Art. 4.

With a money fine not exceeding £250, or imprisonment not exceeding one year shall be punished he who, in conflict with any publication of the State President as described in Art. 5, disseminates any printed or published matter.

Whenever, after a conviction of a responsible editor, publisher, or printer of periodical printed matter, another punishable action is committed by means of that periodical printed matter, the owner can also be punished with a money fine not exceeding £500, or with a prohibition of publication of such printed matter for a period not exceeding two years.

Art. 10. The provisions contained in Articles 2, 3, and 4 of this Law are not applicable to printed matter which is issued on account of, or upon order of, or with the consent of the Government.

EXPULSION OF ALIENS.—The Alien Expulsion Act, which was passed in the same year, is, like the Libel Act, partly directed against the publishers of English newspapers in the Transvaal—

Art. 1. All aliens inciting to disobedience or transgression of the law by word of mouth, in writing, or by public means, by which public peace or order is or can be endangered, may be expelled by order of the President, acting on the advice and with the consent of the Executive and after having obtained the advice of the State Attorney, and such alien shall be obliged to leave the State within a specified time. During this interval he will be allowed to avail himself of the provisions of Art. 5 of this law. In case the High Court pronounces his objections unfounded, effect will immediately be given to the order of expulsion. In case the High Court decides that he is a burgher of the Republic he shall fall under Art. 2.

Art. 2. The State President, with the advice and consent of the Executive Council, and after having obtained the advice of the State Attorney, shall have the power, in case it appears that foreigners or burghers are dangerous to the peace and good order of the Republic by inciting to contravention of the law, to order their residence in a different part of the Republic, and to prohibit their residence in certain places.

Art. 3. Burghers of the South African Republic may not be banished across the border of the Republic.

Art. 4. The President shall report to the Volksraad any steps taken by him in accordance with Arts. 1 and 2.

Art. 5. Every one to whom Art. 1 of this law is applicable, and who claims to be a burgher of the South African Republic, may (but on this ground alone) appeal by written petition to the High Court.

Art. 6. Any alien who does not comply with the order of the State President, according to Arts. 1 and 2 of this law, shall be liable to six months' imprisonment, to be imposed by the Landdrost under whose jurisdiction he resides. After he has served his term of imprisonment he shall be put across the borders. Any alien so expelled returning to the Republic without the consent of the President, with the advice and consent of the Executive Council, shall be liable to a *maximum* imprisonment of twelve months, after serving which term he shall be put across the borders.

Art. 7. A burgher not obeying the order of the President shall be subject to at most six months' imprisonment.

Art. 8. Any alien punished in accordance with the provisions of this law shall be bound to submit himself to personal and anthropometrical examination.

APPEALS TO PRIVY COUNCIL.

PROCEDURE.—An appeal lies from the Colonial Supreme Courts to the Queen in Council—that is, in practice, to the Judicial Committee of the Privy Council.

51 Vict.
c. 43.

In criminal cases, leave to appeal must always be obtained from the Judicial Committee, and, as might be expected, criminal appeals are of rare occurrence. Indeed, by a recent statute of the Canadian Parliament, appeals from that colony in criminal cases have been altogether forbidden.

In civil cases, appeals may be brought as of right, where the value of the matter actually in dispute in the appeal is such as has been fixed by law for the particular tribunal from which the appeal is brought. The appealable amount varies in the different colonies. In other cases, leave to appeal must first be obtained from the Judicial Committee, and, in advising Her Majesty whether to allow an appeal or not, the Judicial Committee will have regard not merely to the amount in dispute, but to the importance of the question involved.

COST OF APPEAL.—The cost of applying to the Judicial Committee for special leave to appeal depends largely on the length of the documents which have to be perused, but, in ordinary cases, the amount may be estimated at from £40 to £50. As to the appeal itself, it may be roughly calculated that an appeal, the record of which contains 1000 folios, and which occupies the Judicial Committee three days, will cost the appellant from £300 to £350.

PART IV.

FOREIGN PRESS LAWS.

THE development of the Law relating to the Press has in all countries followed much the same course. At first the invention of the printing-press was generally welcomed, and German printers were encouraged to establish themselves at the various Courts and Universities throughout western Europe. In France, where intellectual activity was then at its height—in Paris and Orleans alone some ten thousand copyists were constantly employed in the multiplication of manuscripts—there was naturally eager curiosity about the new invention, and in 1470, the year before Caxton began printing under the protection of the Abbot of Westminster, Ulrich Gering set up a press in the Sorbonne, the theological faculty of the University of Paris. Three years later Louis XI. granted letters patent to this same “Uldaric Quéring” and two other Germans authorizing them “de faire livres de plusieurs manières d’écritures, en moslé et autrement,” and before many years more than fifty printing presses were at work in Paris.

For a time, no doubt, the Church and the universities were able to control the new power, as they had all along regulated the issue and sale of manuscripts ; but as the presses multiplied the task became impossible, especially

as the unrest of the New Learning was even then beginning to spread throughout Europe. In 1496 Alexander VI. exhorted the bishops to greater vigilance in preventing the appearance of unauthorized books, and in 1501 a special Bull was issued threatening with excommunication any printer who issued a book without first "asking the advice" and obtaining the permission of the archbishop in whose province the book was to appear, or his representative. From this time forth the principle of the Censorship was definitely established. It was consolidated and extended by Leo X. in 1515, and from 1524 to 1548 a series of Imperial Diets drew up regulations of similar import and of ever-increasing stringency for the use of the civil power in Germany. In Paris the King and the Sorbonne soon repented of their overhasty welcome, and in 1535 an edict of Francis I. absolutely prohibited the printing of books, the penalty for infraction being death. Such an order could not be enforced, and it was soon replaced by another, giving full power to the Sorbonne to decide on the fate of books, and of their authors and printers, and this practically continued in force till the Revolution. In England the Ecclesiastical Courts and the Court of Star Chamber both appear to have claimed and exercised the right of censorship, the power of the latter body being firmly established by an Order of the Court, drawn up in the reign of Elizabeth (1585). When the Court of Star Chamber was abolished by the Long Parliament in 1641, the censorship was expressly retained, and did not finally disappear from our statute book till 1695.

The abolition of the censorship by the Parliament of William III., and the consequent establishment of the English press on the firm basis of "freedom from previous

restraint," supplied the advocates of similar liberty abroad, all through the eighteenth century, with an example, while in Milton's "*Areopagitica*" they had a text book. To Denmark belongs the credit of being the first Continental state to adopt the principle of liberty. It is true that the Rescript of September, 1770, did not long survive its real author, the ill-starred Struensee, whose death on the scaffold formed a gloomy close to a short and most dramatic chapter in Danish history, but still the fact deserves to be recorded—if for nothing else, because it gave occasion to Voltaire's "*Epître au Roi de Danemark*"—that Christian VII. was the first sovereign to proclaim "the unrestricted liberty of the press" throughout all his dominions. The American colonies, when they began their struggle for independence, naturally gave prominence to the claim for which, in great measure, they had crossed the Atlantic; "the liberty to know, to utter, and to argue freely according to conscience." Pennsylvania, Maryland, North Carolina, and Delaware embodied in their constitutions, adopted in 1776, the doctrine of liberty, and when the time came for drawing up the Constitution of the United States, one of its earliest provisions was (Amendment of 1789, Art. 1) that "Congress shall make no law abridging the freedom of speech or of the press."

The censorship established in France by Francis I., continued in force till the Revolution, when it disappeared with the rest. Liberty, in theory at least, took its place for a time. Article 11 of the constitution of 1791 runs thus:—"La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme. Tout citoyen peut donc parler, écrire, imprimer librement sauf à répondre de l'abus de cette

liberté dans les cas déterminés par la loi." In Spain (1812), Belgium (1831), and Greece (1844), English example and influence led to the abolition of the censorship. The revolutions of 1848 gave similar liberty to most of the German states, as well as to Holland, Italy, and Denmark, and in Austria-Hungary "authorization" and the censorship were declared abolished by the Fundamental Law of 1867. Every European state with any pretensions to a progressive civilization has now adopted freedom from censorship as the basis of its press legislation.

No practical object would be gained by a detailed account of all these various Laws and Codes, many of which are mere copies of the same original. It will be enough if we take the two most important and most comprehensive recent enactments on the subject, the French "*Loi de la Presse*" of 1881, and the German "*Reichspressgesetz*" of 1874, and examine them in the light of our English experience. It so happens that in each country, as soon as the last great national crisis was over, and institutions were established on a firm and regular basis, the best minds in the legislature applied themselves to the task of fixing and defining, once for all, the position, rights, and responsibilities of the periodical press. When German unity was established in 1871, it was recognized on all hands that the laws regulating the freedom of thought and speech were a matter of Imperial concern, and so should be removed from the control of the local governments. This was provided for in article 4, section 16 of the constitution of April, 1871, and the work of preparing a comprehensive Press Law was taken in hand with as little delay as possible. On February 11, 1874, the Imperial Chancellor laid before the Reichstag the Bill drawn up by

the Federal Council, and after long debate and many amendments it was finally passed, and came into force on the 1st of July of the same year.

In France, where, under the various régimes that had risen and fallen during the century, there had grown up a body of over forty different and sometimes contradictory laws affecting the press, the need for reform and codification was not less urgent, but the internal struggle was for a time too intense, and it was not till the steady working of the constitution of 1875 had resulted in the bringing together in both Houses of something like a homogeneous majority that the law of July, 1881, set in order the confused mass of statutes. It is well, from our point of view at least, that in each country advantage was taken of the moment of national complacency when, so far as domestic politics were concerned, all seemed plain sailing. We have thus registered, as it were, the high-water mark of liberal and constructive statesmanship in the two leading states of the Continent. In each case freedom from previous restraint is expressly declared to be the keynote of the whole code, the *ratio legis* in the light of which it is to be interpreted. The abuse of that freedom is an offence to be punished by the law, but unless and until such an offence has been committed the writer is free, and no preliminary censorship, civil or religious, can come into operation to check or to guide him.

PRESS LAWS IN FRANCE.

The Revolutionary constitution of 1791 conferred, as we have seen, absolute liberty on the French press. But that settlement did not last long. It would be useless to attempt to follow the succeeding enactments, which

responded to each change of popular temper, and for ninety years filled the statute books with a body of legislation of bewildering complexity. There are, however, three laws which stand out as landmarks, and call for passing notice. The Law of May, 1819, was the basis of all subsequent attempts at legislation, and the greater part of it remained in vigour till the passing of the Law of 1881. It re-established, before all, the principle of the sanctity of private life, which had naturally been in abeyance during the orgie of defamation which accompanied the Revolution. To use the words of M. Royer Collard, it provided that private life should be walled in (*murée*), and with this object personal defamation was expressly excepted from "crimes and offences of the press," which were to be tried before a jury. Nor could truth be pleaded as a justification, for the law absolutely prohibited "*les preuves des faits diffamatoires*." It may be mentioned here, that by a short-lived law of the Second Empire, known at the time (May, 1868) as the *mur Guillaumet*, private life was still more effectually "walled in." Article 11 of this law ran as follows:—"Toute publication dans un écrit périodique relative à un fait de la vie privée constitue une contravention punie d'une amende de 500 francs."

Next in importance to the Law of 1819 comes the Law of 1822, introducing the remarkable principle of the "procès de tendance," which effectually placed the press at the mercy of the government of the day. It provided that, although no particular article or copy of a newspaper could be fixed upon as containing a breach of the law, the "tendency" of the paper through a series of articles might be so interpreted. In a country where the magistracy might almost be called a branch of the

executive, the result of such a law may be imagined. For the first "offence" the paper might be suspended, the second was followed by suppression.

Finally, in 1850, the signature of the author to every "article of discussion" was made compulsory by the "Loi Tinguay." The wording of this law, which has had a lasting but altogether unexpected effect on French journalism, is as follows:—"Tout article de discussion politique, philosophique ou religieuse, inséré dans un journal, devra être signé par son auteur, sous peine d'une amende de 500 fr. pour la première contravention, et de 1000 fr. en cas de récidive." The result was, that when any article appeared that was likely to attract the attention of the authorities, it was signed by an *écrivain de paille*, some more or less illiterate person, who was kept about the office to face unpleasant visitors, fight duels, and go to prison, when necessary. This law, which has immortalized the name of an otherwise obscure Deputy, has long been repealed, but its effect is still visible in the prevalence of signed articles in the French press. When no prosecution was to be feared, the article was signed by its real author, and when the necessity for concealment had disappeared the habit of signing still continued. In short, the only permanent effect of a law which was intended to hamper the expression of opinion by the press, has been the remarkable prominence acquired in French public life by individual writers whose personality in any other country would have remained unknown.

The Law of the Press of July, 1881, abolishes all preceding legislation, forming in itself an elaborate Code. It opens with a declaration of liberty of printing and publication. In a word, as M. Cazot, Minister of Justice,

said in his official circular to the Procureurs-Généraux, "All preventive measures are abolished." The first four clauses deal with the regulation of printed matter "intended for publication," providing that it shall bear the name and address of the printer, and that two copies shall be forwarded to the national collections.

With clause five begin the special provisions affecting newspapers. There is no attempt at exact definition of a newspaper. The law, it is declared, applies to "tout journal ou écrit périodique." In most of the previous legislation on the subject only political journals were dealt with; the present law applies to periodical publications of all sorts. The preliminary sanction (*auto-
risation préalable*) and the giving of security (*dépôt de
cautionnement*) are both abolished; but, before publication, the title of the paper, the name and address of the manager (*gérant*), and the "*indication*" of the printer, must be handed in in writing, stamped, at the Parquet of the Public Prosecutor, and any change in any of these conditions must be similarly notified within five days.

This is what is known in Continental law as the "personification" of the journal—the providing of a responsible person who represents and is responsible for the paper before the law. As we shall see, the German law is similar, the place of the Manager being taken by the Editor (*verantwortlicher Redacteur*). The *gérant* must be a Frenchman resident in France, of full age, and in possession of all his civil rights. His name must be printed upon every copy, and he must himself sign four copies of each issue, which are then to be deposited, two each at the Parquet and the Préfecture.

"Compulsory rectification" plays a large part in the French Press Law, and is a fruitful cause of controversy.

In the first place a distinction has to be made between the cases in which the party claiming the right to reply is an official (clause 12), or a private person (clause 13). In the first case it is provided that, "The *gérant* is bound to insert gratuitously at the beginning (*en tête*) of the next number of the newspaper or periodical every correction (*rectification*) addressed to him by a depository of public authority, concerning his official acts which may have been inaccurately reported." The correction may extend to, and must not exceed, twice the length of the original article. In the second case the *gérant* is bound to insert within three days (or in the next number when the paper is not a daily) "the reply (*réponse*) of any person named or referred to in the newspaper, without prejudice to the other penalties to which the article may give rise." This insertion shall be made "in the same place and in the same type" as the original article and shall be published without charge, provided it does not exceed twice the length of the article. In that case the excess shall be charged for at advertisement rates.

It will be seen that there is an important difference between the two cases. A public functionary can only make a correction as to matters of fact relating to his office, whilst any private person who has been named or referred to may "reply"—a very vague and indefinite phrase, which, as might have been expected, has given rise to endless litigation and many contradictory decisions. It was held by one tribunal that the right was "general and absolute," and that the person referred to was "the sole judge of the opportuneness, the form, and the tenor of his reply." A higher Court, however, gave a decision which relieves the press from such an interpretation. "The reply," says this important judgment

(Cassation, Ch. Crim., 17 Août, 1883), "must contain nothing contrary to the honour and the good name (*considération*) of the party to whom it is addressed. In the contrary case it may be refused, for the journalist is not bound to divide and separate the reply in order to publish only those portions which do not transgress the exercise of the right of legitimate defence." It has also been held that insertion may be refused if the reply contains "anything offensive, contrary to the law, or likely to compromise the interest of third parties." In a case that came before the Paris Court of Appeal in the present year (1898), it was decided (a point which indeed would seem sufficiently clear from the wording of the Code, although the Court of First Instance held the contrary) that this provision applies in cases of literary, dramatic, or artistic criticism. M. Dubout having, as he believed, reason to complain of the criticism of his play "Frédégonde" which appeared in the *Revue des Deux Mondes*, from the pen of M. Jules Lemaitre, forwarded a reply to the editor. This was refused insertion. On appeal the Court held that M. Dubout, as a person "named or referred to," had a right to reply, and ordered M. Brunetière to insert the judgment and the reply in the Review, and to pay a fine and the costs of the action. On further appeal the Cour de Cassation (June, 1898) confirmed this decision.

Clause 14 provides for the prohibition by ministerial decree of newspapers published abroad. The succeeding eight clauses, comprising the whole of the third chapter, relate to posters, electoral addresses, and the colportage or sale of papers in the streets, and are of no particular interest to English readers.

The fourth chapter of the Code deals with incitements

to crime contained in newspapers. It is provided generally that all those shall be regarded as accomplices in a crime or misdemeanour, who "by writings or printed matter sold or distributed . . . or exposed to the public view," shall have *directly* incited to the commission of the offence. In most cases the incitement must have been followed by an overt act; but the more serious crimes, such as murder, pillage, arson, and certain "crimes against the security of the State," are specially excepted. In these cases the direct incitement is in itself a misdemeanour. The other "public wrongs" (*délits contre la chose publique*) specially set out for punishment are: the attempt to corrupt soldiers and lead them astray from their duties; insult to the President of the Republic; the publication, *de mauvaise foi*, of false news which has resulted in a disturbance of the public peace; and "outrage aux bonnes mœurs." In the original draft of the law, the Republic, the Senate, and the Chamber of Deputies were protected in the same manner as the President; but the proposal was not adopted by the Chamber.

In the case of "offences against persons" a distinction is drawn between "diffamation," which is defined as "the allegation or imputation of an act which tends to injure the honour and consideration of the person or body to whom it is imputed," and "injure," which is an "offensive expression, a term of contempt or invective, which does not involve such imputation." Each of these offences is punishable with imprisonment or fine, or both.

This clause (§ 29) is simply a repetition of that contained in the law of May 17, 1819, which gives expression to the established and accepted law of France. Containing as it does the "classical" definition of the offences in

question, it has been the subject of numberless judicial decisions and fine-drawn distinctions which will be found set forth at length in the text books. The main point to notice is that in the French law malice (*l'intention de nuire*) is necessary, the intention of course being presumed from the nature of the act. In the words of a judgment of the Court of Cassation (Cass., 18 Mars, 1881), "Il y a toujours présomption de mauvaise foi. Il y a toujours présomption de l'intention de nuire. . . . C'est au prévenu à établir qu'il a agi de bonne foi." Again, MM. Grellet-Dumazeau in their "Traité de la Diffamation" put it thus: "Par ces mots 'intention de nuire' il ne faut pas entendre exclusivement le dessein de causer à autrui un dommage plus ou moins immédiat, soit dans sa fortune, soit dans son honneur, ou dans sa considération. . . . C'est un fait de conscience que le droit romain appelait invariablement *dolus* et que ses interprètes ont exprimé par *animus injurandi*; c'est à dire l'esprit de dénigrement, de malice, de méchanceté, le désir de satisfaire une mauvaise passion, un ressentiment." *

Specially protected from defamation by the Code are; courts of justice, the army and navy, and certain official public bodies (*les corps constitués et les administrations publiques*). Officials are also individually protected if attacked in their official capacity (*à raison de leurs fonctions ou de leur qualité*). The list of those included in this category is a long one, ranging from cabinet ministers to jurors and witnesses.

Clause 34 settles the long-disputed question of the possibility of libelling the dead, which the Cour de Cassation had repeatedly decided in the affirmative, while several of the Courts of Appeal had maintained the

* "Traité de la Diffamation," vol. i. p. 148.

negative. The law is now clear. The Act does not apply in cases of "defamation or insult directed against the memory of the dead, except when the authors of the defamation or insult have intended thereby to attack the honour and consideration of the living heirs."

"Votre Commission n'a pas voulu," said M. Pelletan, the Official Reporter of the Bill, in his speech in the Senate, "qu'on mît l'histoire au greffe: elle n'admet le délit de diffamation des morts qu'autant qu'elle passe par-dessus leur tombe pour aller frapper des vivants."

The truth of the "fait diffamatoire" may be established by evidence in the case of the public bodies already mentioned, or of individuals attacked in their official capacity; and also by a provision new to French law in the case of "the directors or administrators of any industrial, commercial, or financial enterprise which publicly appeals for support from savings or credit (*faisant publiquement appel à l'épargne ou au crédit*)."

But truth cannot be pleaded in the case of attacks on private persons. "La vie privée est murée."

Foreign Sovereigns and Heads of State, ambassadors, and all agents of foreign Governments accredited to the Republic are specially protected from attacks in the press (§§ 36, 37). The law in this respect was further strengthened by an enactment of May, 1893, providing that offences and insults against foreign Sovereigns and their representatives shall be tried by the Correctional Police and not before a Court of Assize and Jury.

In those cases where the attempt to prove the "faits diffamatoires" is forbidden, it is also forbidden to publish any report of the case. In all civil cases the Court may forbid the publication of the proceedings, the judgment alone being made public. In criminal cases (§ 38) it is

forbidden to publish the indictment or other document connected with the case before the public hearing. Any publication of the private deliberations of the Court or the jury is forbidden. It may be noted that this forbidding of publication in cases of defamation is quite distinct from the exclusion of the public from the hearing (*le huis-clos*), which is provided for in Article 87 of the Code of Civil Procedure. It is there enacted that in civil actions the Court may order the *huis-clos* "if the public discussion of the case would involve scandal or other grave inconvenience." And by Article 81 of the Constitution of 1848 the public may be excluded "in every case where publicity would constitute a danger for order and morality."

A *bonâ fide* report of the proceedings of the Senate or Chamber of Deputies or a "faithful and *bonâ fide* report" (*compte-rendu fidèle fait de bonne foi*) of a public trial is absolutely privileged, provided always in the latter case that the report has not been forbidden by the Court or by the above-mentioned provisions of the present law.

The public announcement of subscriptions to indemnify those condemned to penalties "*en matière criminelle et correctionnelle*" is forbidden. The collection of subscriptions is not, however, in itself illegal.

With regard to the persons to be held responsible for offences committed by the press, it is provided (§ 42) that (1) the manager (*gérant*) or editor, (2) the author, (3) the printer, and (4) the vendor or distributor of the offending print may be proceeded against as principals. This responsibility is, however, "successive and exclusive;" that is to say, they can in general only be prosecuted "in default one of the other, in the order given, and successively." The author may, however (§ 43), be

proceeded against along with the responsible manager or editor as an accessory. The vendors or distributors of the papers may also be regarded as accomplices, provided it be established that they have acted consciously (*agisciement*) and "en connaissance de cause." In case a third party to whom damages have been awarded (§ 44) shall be unable to obtain his money from any of the parties already mentioned, he may recover it from the proprietor, if he can find him.

The remaining clauses are devoted to procedure, and so do not come strictly within our present purpose. One or two points are of interest. Actions must be brought within three months of the publication. The general principle is laid down that all offences dealt with in the Code shall be referred to the Assize Court; that is to say, they shall be tried by a jury. This is followed, however, by a long list of exceptions which are to go before the ordinary criminal courts or the police courts (*tribunaux de police correctionnelle, tribunaux de simple police*).

THE GERMAN PRESS LAW.

The German law of 1874 is much shorter than the French law of 1881, and, as might be expected, does not contain so many points of interest to English readers. The first six clauses are introductory, and deal with printed matter of all sorts. This term (*Druckschriften*) is defined as including "all reproductions, by mechanical or chemical means, of writings, or of pictorial representations with or without writing, or of music with words, intended for circulation."

Circulation (*Verbreitung*) includes, besides publication,

in the ordinary sense, of printed matter, its "posting up or exposure in places where it may be taken cognizance of by the public." The exact legal meaning of this word (*Verbreitung*) is not altogether clear. In the Prussian press law of 1851 *Veröffentlichung* (publication) was used, and the law-writers are not agreed as to the precise significance of the change. It would appear that both the *body* and the *contents* of the document, book, or newspaper must be communicated, and that neither oral communication on the one hand, nor circulation in the ordinary course of a publisher's business and without knowledge of the contents, on the other, is punishable under this law.

With the 7th clause we come to the special regulations applying to newspapers. "Periodical printed matter within the meaning of the law" is declared to include "Zeitungen und Zeitschriften welche in monatlichen oder kürzeren, wenn auch unregelmässigen Fristen erscheinen." There is no formal registration of the paper as in France, but in addition to the name of the printer and publisher, there must on each number be given the name and address of the responsible editor (*verantwortlicher Redacteur*), who must be a person in possession of his full civil rights and domiciled in the German Empire. His position and duties are fully dealt with in a later section of the Act. The next provision that calls for notice has, like that relating to the responsible editor, been borrowed, with certain modifications, from the French law, for in Germany also the editor finds himself face to face with the duty of compulsory rectification (*Berichtigungszwang*). Clause 11 enacts that the editor of a newspaper shall be bound, "on the request of any public body or private person concerned," to publish, "without additions or

omissions," a rectification of any statement of fact in his newspaper; provided the correction be signed, contains nothing contrary to the law, and confines itself to matters of fact. It must be published in the next number of the newspaper in the same position and in the same class of type as the offending statement, and it must be published free of cost so far as it does not exceed in length the original statement. Anything over that length may be charged for as an advertisement. If a paper published abroad should be condemned twice within the same year by the German Courts, its further circulation in Germany may be forbidden (sect. 14) for not more than two years. In time of "war-danger," or of actual war, all publication of movements of troops or of measures of defence may be summarily forbidden by public proclamation (sect. 15). The publication of a request for subscriptions to meet the payment of a fine inflicted for a press offence or of the costs of the defence, and the public acknowledgment of such contributions, are alike forbidden (sect. 16). The publication before it has been produced in open court of the indictment or other official document relating to a prosecution (sect. 17) is also forbidden.

Passing from the newspaper which commits the offence to the person who is to be held responsible for it before the law, the Act lays down the general principle (sect. 20) that the "responsible editor" shall be regarded as the author of the offence, "unless his responsibility is disproved by special circumstances." Here, as in the French law, the question turns on the presence or absence of *dolus* on the part of the editor, and *dolus* in German law is defined as "a knowledge of the guilty character" of the article in question. It is for the editor to show in any exceptional case that he was not

responsible. By putting his name at the head of it he becomes, as it were, the author of the whole paper, and although the actual writer—if he can be discovered—is, of course, punishable, the primary, and for legal purposes sufficient, responsibility falls upon the editor, who cannot be called upon to give the writer's name or otherwise give evidence against him.

The editor, then, is always to be proceeded against as the principal, all the others responsible for the publication being regarded as accessories; and these are dealt with (sect. 21) on the principle of "successive and exclusive responsibility," which we have already seen at work in the French law. But the order of succession laid down in the German law differs somewhat from the French.

First, the editor, if he has succeeded in establishing the "special circumstances" which free him from *dolus* under the previous article, and then the publisher, the printer, and the distributor of the publication, may each in succession be prosecuted for negligence (*Fahrlässigkeit*), and punished by fine and imprisonment. The responsibility is also "exclusive," that is to say, if any one of the series when proceeded against can point to a "*Vormann*," that is, one who comes before him in order of responsibility, the prosecution falls to the ground. In all cases (sect. 22) a prosecution to be successful must be initiated within six months of publication—a slight improvement on the French law, which only gives the prosecutor three months in which to make up his mind.

The German law of defamation is based, like the French, on the Roman law, but it has developed certain distinctions. In neither French nor German law is there found any trace of our entirely modern and artificial

distinction between spoken and written defamation—called, in English law, slander and libel. The distinction in the German Penal Code is a severely logical one. Slander (*Beleidigung*) consists in an intentional, illegal expression of lack of esteem. It may be real or verbal, according as it is expressed in actions, or in words, writing, or pictures. Further, there is the distinction between “simple” slander and the more serious offence of *Verleumdung* or *verleumderische Beleidigung*, which involves the making of a false charge with knowledge of its falsehood (*wider besseres Wissen*). To constitute the offence there must be injury to the honour properly belonging to the party attacked, in his position or calling, and this applies equally to individuals and to public and political boards and associations, to religious societies, and to trading corporations. The injury must be intentional, a condition which somewhat resembles the English “malicious.” It cannot arise through negligence; there must be present the *animus injurandi*: but this, again, will be interpreted from a knowledge of the consequence of the act. Finally, it must be illegal, and this affords an opening for the defence of truth—*exceptio veritatis*,—for, if the charges are true, there is no injury to honour. But even if the justification is established, the defamation may be punishable if the form of the accusation was essentially an insulting one. Privileged occasion arises in German law when it is a case of defending or protecting a justifiable right, as in the case of parents and children, teacher and pupil, master and servant. The Austrian law, following the French, does not permit the proof of the truth in cases of private and family life, or of certain charges and acts punishable in themselves, if made in words, in writing,

or pictorially. The German law respecting slander of the dead is also somewhat different from that of either England or France. To attack the memory of the dead by knowingly untruthful charges, such as would, during lifetime, have tended to render him contemptible or to lower him in public esteem, is punishable on the complaint of surviving relatives.

The question of "venue" is an important one in its consequences, for it has been held that a press offence is committed, and the responsible editor may be proceeded against, not only in the place where the paper was originally published, but also where the offending matter has come to the knowledge of a reader.

In certain flagrant cases of breach either of the Press Law or of the ordinary Criminal Law, and when there is "urgent danger" of the incitement being immediately followed by a crime or misdemeanour (sect. 23) a "provisional seizure" of the offending matter is permitted. The decision as to whether such seizure was justified or not lies with the appropriate Court (*das zuständige Gericht*), before whom the case must (sect. 24), without delay, be brought by the authorities,—within twelve hours when the seizure has been effected by police order, or within twenty-four hours when it has taken place by order of the Public Prosecutor (*Staatsanwalt*). If the Court declares the seizure to be unjustified, or if the authorities do not apply for this judicial sanction within the proper time, the seizure is void, and the papers must be restored. Although in Germany this power of provisional seizure does not appear to be harshly or arbitrarily exercised, it is easy to see that, in the case of a daily newspaper at least, repeated stoppages of circulation might be enforced so as to virtually

suppress the paper altogether, especially as there is no provision for the recovery of damages against the official who oversteps his duties.

A somewhat similar provision in the Austrian law of December, 1862, has in fact been employed in such a manner as to constitute a political censorship of the most irresponsible kind. Sect. 7, clause 16, of this law provides for what is known as the "*objektive Verfahren*," that is, for proceedings against the *object* (the offending paper or book), instead of the editor or printer. This section for some time remained almost a dead letter, but in 1868 the so-called "Bürgerministerium," finding it impossible to get verdicts from juries in Press cases, especially in Bohemia, hit upon the expedient which has been very actively employed ever since.

The clause provides that the Public Prosecutor may, without proceeding against any *person*, make application to a magistrate, sitting in private, for a declaration that a certain book or newspaper contains matter contrary to the law, and that its circulation be forbidden. Armed with this authority, copies of the paper may be seized wherever found, and its circulation rendered impossible. This power closely resembles that formerly claimed by the Secretary of State in England to issue a general warrant authorizing his agents in the case of publications alleged to be seditious, to search for and seize all copies of the libel. Such a procedure was declared illegal in *Entick v. Carrington* (State Trials, XIX., 1030).

The *objektive Verfahren* has been found so convenient and effective that this section has in practice superseded all the other sections of the law, and the Press in Austria is absolutely at the mercy of the Government of the day. The sale of newspapers is also laid under such

restrictions that, with the exception of Russia, there is no European country in which the expression of public opinion is more hampered. And this in spite of the Fundamental Law of December, 1867, which is supposed to guarantee the liberty of the Press. There is also an inland revenue tax of one kreuzer on every copy of every newspaper published and circulating in the empire, and of two kreuzers on foreign newspapers. This latter tax, as has already been pointed out (p. 14), is independent of postage, and is levied on newspapers entering the country from abroad.

It may be remarked that in the kingdom of Hungary the law is much more liberal than in the Austrian Empire, *objektive Verfahren*, confiscation, restrictions on public sale, and compulsory rectification being unknown.

Six clauses of the German Code (sects. 23-28) are occupied with the explanation of the limitations and the consequences of this provisional seizure, and the rest of the Act is devoted to details, chiefly of a local character. In time of "War-danger," "State of War," and "State of Siege" (sect. 30), the emperor is endowed by the Constitution of 1871 with very extended powers for suspending by proclamation the action of certain laws, and to this the law of the Press forms no exception. The final clause (sect. 31) provides that Alsace-Lorraine shall remain subject to special laws. These laws have recently been materially modified in the direction of increased liberty, a decree of April, 1898, practically restricting the exceptional powers to the case of foreign papers, or of papers appearing in a foreign language.

APPENDIX.

STATUTES.

BETTING AND LOTTERIES (ADVERTISEMENTS OF).		PAGE
16 & 17 Vict. c. 119, s. 7		322
37 Vict. c. 15, ss. 1, 3		323
4 Geo. 4, c. 60, s. 41		323
6 & 7 Will. 4, c. 66		324
8 & 9 Vict. c. 74, ss. 3, 4		324
COPYRIGHT.		
5 & 6 Will. 4, c. 65		326
5 & 6 Vict. c. 45		328
ILLEGAL PRACTICES AT ELECTIONS.		
46 & 47 Vict. c. 51, s. 9, sub-s. 2, and ss. 10, 18, 64		342
58 & 59 Vict. c. 40		343
45 & 46 Vict. c. 50, s. 7		344
47 & 48 Vict. c. 70, s. 6, sub-s. 2, s. 7, s. 14, s. 35, sub-s. 1, s. 36, sub-s. 1, and First Schedule		344
51 & 52 Vict. c. 41, s. 75		345
56 & 57 Vict. c. 73, s. 48		346
INDECENT PRINTS, ETC.		
5 Geo. 4, c. 83, s. 4		346
1 & 2 Vict. c. 38, s. 2		346
20 & 21 Vict. c. 83		347
LIBEL, REGISTRATION AND IMPRINT.		
32 Geo. 3, c. 60 (Fox's Act)		350
60 Geo. 3, c. 8, ss. 1, 2 (Blasphemy and Sedition)		351
3 & 4 Vict. c. 9 (Parliamentary Papers)		352
6 & 7 Vict. c. 96 (Lord Campbell's Act)		354
8 & 9 Vict. c. 75 (Lord Campbell's Act, Amendment)		357
32 & 33 Vict. c. 24 (Imprint, etc., Schedule II.)		359
44 & 45 Vict. c. 60 (Libel and Registration Act)		365
51 & 52 Vict. c. 64 (Law of Libel Amendment Act)		371
INDIAN AND COLONIAL LAW.		
Indian Penal Code, chap. xxi. (Of Defamation)		373
Queensland Law of Defamation		375
Canadian Criminal Code, 1892 (Defamatory Libel)		386

OFFICIAL SECRETS ACT.	PAGE
52 & 53 Vict. c. 52, ss. 1-3	389
POST OFFICE, STAMPS, ETC.	
7 Will. 4, and 1 Vict. c. 36, s. 5	391
3 & 4 Vict. c. 96, s. 43	392
31 & 32 Vict. c. 110, ss. 16, 23	392
33 & 34 Vict. c. 79	393
38 Vict. c. 22, ss. 1 and 5	400
44 & 45 Vict. c. 19	401
54 & 55 Vict. c. 46, ss. 1, 2	401
54 & 55 Vict. c. 39, ss. 98, 116	402
58 Vict. c. 16, s. 13	403
STOLEN GOODS (ADVERTISEMENTS FOR).	
24 & 25 Vict. c. 96, s. 102	403
33 & 34 Vict. c. 65, ss. 2, 3	404

BETTING AND LOTTERIES, ADVERTISEMENTS OF.

A.—*Betting.*

16 & 17 VICT. C. 119, s. 7.

[1853.]

Penalty on ANY person exhibiting or publishing or causing to be exhibited or published, any placard, handbill, card, writing, sign, or advertisement, whereby it shall be made to appear that any house, office, room, or place is opened, kept, or used for the purpose of making bets or wagers, in manner aforesaid, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort to such house, office, room, or place for the purpose of making bets or wagers, in manner aforesaid, or any person who, on behalf of the owner or occupier of any such house, office, room, or place, or person using the same, shall invite other persons to resort thereto for the purpose of making bets or wagers, in manner aforesaid, shall, upon summary conviction thereof before two justices of the peace, forfeit and pay a sum not exceeding thirty pounds, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable, and on non-payment of such penalty and costs, or in the first instance, if to such justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding two calendar months.

37 VICT. c. 15, ss. 1 and 3.

[1874.]

1. This Act shall be construed as one with the Act of the Session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and nineteen, intituled "An Act for the suppression of Betting Houses" (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Betting Acts, 1853 and 1874, and each of them may be cited separately as the Betting Act of the year in which it was passed.

Act to be construed with 16 & 17 Vict. c. 119.

3. Where any letter, circular, telegram, placard, handbill, or advertisement is sent, exhibited, or published—

Penalty on persons advertising as to betting.

- (1.) Whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will on application give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the principal Act, or will make on behalf of any other person any such bet or wager as is mentioned in the principal Act; or,
- (2.) With intent to induce any person to apply to any house, office, room, or place, or to any person, with the view of obtaining information or advice for the purpose of any such bet or wager, or with respect to any such event or contingency as is mentioned in the principal Act; or,
- (3.) Inviting any person to make or take any share in or in connection with any such bet or wager;

Every person sending, exhibiting, or publishing, or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in the seventh section of the principal Act with respect to offences under that section.

B.—*Lotteries.*

4 GEO. 4, c. 60, s. 41.

[1823.]

If any person or persons shall sell any ticket or tickets, chance or chances, share or shares of any ticket or tickets, chance or chances in any lottery or lotteries authorised by any foreign potentate or state, or to be drawn in any foreign country, or in any lottery, or lotteries, except such as are shall be authorised by this or some other Act of Parliament to be sold, or shall publish any proposal or scheme for the sale

of any ticket or tickets, chance or chances, share or shares of any ticket or tickets, chance or chances except such lottery or lotteries as shall be authorised as aforesaid, such person or persons shall, for every such offence, forfeit and pay the sum of fifty pounds, and shall also be deemed a rogue and vagabond, or rogues and vagabonds, and shall be punished as such in the manner hereinafter directed.

6 & 7 WILL. 4, c. 66.

An Act to prevent the advertising of Foreign and other Illegal Lotteries. [1835.]

WHEREAS the laws in force are insufficient to prevent the advertising of foreign and other illegal lotteries in this kingdom, and it is expedient to make further provision for that purpose: Be it therefore enacted . . . that from and after the passing of this Act, if any person shall print or publish, or cause to be printed or published, any advertisement or other notice of or relating to the drawing or intended drawing of any foreign lottery, or of any lottery or lotteries, not authorised by some Act or Acts of Parliament; or if any person shall print or publish, or cause to be printed or published, any advertisement or other notice of or for the sale of any ticket or tickets, chance or chances, or of any share or shares of any ticket or tickets, chance or chances, or of in any such lottery or lotteries as aforesaid, or any advertisement or notice concerning or in any manner relating to any such lottery or lotteries, or any ticket, chance, or share, tickets, chances, or shares thereof or therein; every person so offending shall for every such offence forfeit the sum of fifty pounds, to be recovered, with full costs of suit, by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record in Westminster or Dublin respectively, or in the Court of Session in Scotland one moiety thereof to the use of His Majesty, his heirs and successors, and the other moiety thereof to the use of the person who shall inform or sue for the same.

Penalty for
advertising
foreign or
illegal
lotteries,
£50.

8 & 9 VICT. c. 74, ss. 3 and 4.

[1845.]

WHEREAS by an Act passed in the seventh year of His late Majesty King William IV., intituled "An Act to prevent the advertising of foreign and other illegal lotteries," it was

enacted that if any person [recital of 6 & 7 Will. 4, c. 66, as above] . . . : and whereas the printers, publishers, and proprietors of divers newspapers have inadvertently printed and published some advertisements or notices of or relating to the matters in the said Act mentioned, or some of them, and many actions, suits, informations, and prosecutions have been brought and commenced against such printers, publishers, and proprietors, or some of them, by persons who sue, inform, or prosecute as well on their own behalf as on behalf of Her Majesty, to recover various penalties incurred or alleged to have been incurred under the provisions of the said Act; and it is expedient that all further proceedings in such actions, suits, informations, and prosecutions should be prevented, and such other provisions made in relation thereto, and otherwise as is hereinafter mentioned: . . .

* * * * *

3. Be it enacted, that from and after the passing of this Act all fines, penalties, and forfeitures imposed by or incurred or which may be incurred under the said recited Act, shall go and be applied to the use of Her Majesty, her heirs and successors.

4. Provided always, and be it enacted, that from and after the passing of this Act every such fine, penalty, and forfeiture may be sued or prosecuted for, in the name of Her Majesty's Attorney-General, or Solicitor-General in England or Ireland, or of Her Majesty's Advocate-General, or Solicitor-General in Scotland, or of the Solicitor of Stamps and Taxes in England or Scotland, or of the Solicitor of Stamps in Ireland, or of any person to be authorised to sue or prosecute for the same by writing under the hands of the Commissioners of Stamps and Taxes, or in the name of any officer of stamp duties, by action of debt, bill, plaint, or information in the Court of Exchequer at Westminster in respect of any fine, penalty, or forfeiture incurred in England, and in the Court of Exchequer in Dublin in respect of any fine, penalty, or forfeiture incurred in Ireland, and in the Court of Exchequer in Scotland in respect of any fine, penalty, or forfeiture incurred in Scotland; and except as is hereinbefore provided it shall not be lawful for any person other than as aforesaid to inform, sue, or prosecute for any such fine, penalty, or forfeiture as aforesaid: Provided always that in no such proceeding as aforesaid shall any essoign, protection, wager at law, nor more than one imparlance, be allowed.

COPYRIGHT.

5 & 6 WILL. 4, c. 65.

An Act for preventing the Publication of Lectures without Consent.
[9th September, 1835.]

Authors of
Lectures,
or their
Assigns, to
have the
sole Right
of publish-
ing them.
Penalty
on other
Persons
publishing,
&c., Lec-
tures
without
Leave.

WHEREAS Printers, Publishers, and other Persons have frequently taken the Liberty of printing and publishing Lectures delivered upon divers Subjects, without the Consent of the Authors of such Lectures, or the Persons delivering the same in public, to the great Detriment of such Authors and Lecturers: Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the First Day of *September*, One thousand eight hundred and thirty-five, the Author of any Lecture or Lectures, or the Person to whom he hath sold or otherwise conveyed the Copy thereof, in order to deliver the same in any School, Seminary, Institution, or other Place, or for any other Purpose, shall have the sole Right and Liberty of printing and publishing such Lecture or Lectures; and that if any person shall, by taking down the same in Short Hand or otherwise in Writing, or in any other Way, obtain or make a Copy of such Lecture or Lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without Leave of the Author thereof, or of the Person to whom the Author thereof hath sold or otherwise conveyed the same, and every Person who, knowing the same to have been printed or copied and published without such Consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such Lecture or Lectures, shall forfeit such printed or otherwise copied Lecture or Lectures, or Parts thereof, together with one Penny for every Sheet thereof which shall be found in his Custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary to the true Intent and Meaning of this Act, the one Moiety thereof to His Majesty, his Heirs or Successors, and the other Moiety thereof to any Person who shall sue for the same, to be recovered in any of His Majesty's Courts of Record in *Westminster*, by Action of Debt, Bill, Complaint, or Information, in which no Wager of Law, Essoign, Privilege, or Protection, or more than One Impar lance, shall be allowed.

II. And be it further enacted, That any Printer, or Publisher of any Newspaper who shall, without such Leave as aforesaid, print and publish in such Newspaper any Lecture or Lectures, shall be deemed and taken to be a Person printing and publishing without Leave within the Provisions of this Act, and liable to the aforesaid Forfeitures and Penalties in respect of such printing and publishing.

III. And be it further enacted, That no Person allowed for certain Fee and Reward, or otherwise, to attend and be present at any Lecture delivered in any Place, shall be deemed and taken to be licensed or to have Leave to print, copy, and publish such Lectures only because of having Leave to attend such Lecture or Lectures.

IV. Provided always, That nothing in this Act shall extend to prohibit any Person from printing, copying, and publishing any Lecture or Lectures which have or shall have been printed and published without Leave of the Authors thereof or their Assignees, and whereof the Time hath or shall have expired within which the sole Right to print and publish the same is given by an Act passed in the Eighth Year of the Reign of Queen Anne, intituled *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned*, and by another Act passed in the Fifty-fourth Year of the Reign of King George the Third, intituled *An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns*, or to any Lectures which have been printed or published before the passing of this Act.

V. Provided further, That nothing in this Act shall extend to any Lecture or Lectures, or the printing, copying, or publishing any Lecture or Lectures, or Parts thereof, of the delivering of which Notice in Writing shall not have been given to Two Justices living within Five Miles from the Place where such Lecture or Lectures shall be delivered Two Days at the least before delivering the same, or to any Lecture or Lectures delivered in any University or public School or College, or on any public Foundation, or by any Individual in virtue of or according to any Gift, Endowment, or Foundation: and that the Law relating thereto shall remain the same as if this Act had not been passed.

Newspapers
publishing
Lectures
without
Leave.

Persons
having
Leave to
attend
Lectures.

Act not to
prohibit
the pub-
lishing of
Lectures
after
Expiration
of the
Copyright.
8 Anne,
c. 19.
54 Geo. 3,
c. 156.

Act not to
extend to
Lectures
delivered
in un-
licensed
Places, &c.

5 & 6 VICT. c. 45.

An Act to amend the Law of Copyright.

[1st July, 1842.]

WHEREAS it is expedient to amend the Law relating to Copyright, and to afford greater Encouragement to the Production of literary Works of lasting Benefit to the World: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from the passing of this Act an Act passed in the Eighth Year of the Reign of Her Majesty Queen Anne, intituled *An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned*; and also an Act passed in the Forty-first Year of the Reign of His Majesty King George the Third, intituled *An Act for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of Printed Books to the Authors of such Books, or their Assigns, for the Time therein mentioned*; and also an Act passed in the Fifty-fourth Year of the Reign of His Majesty King George the Third, intituled *An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed Books to the Authors of such Books or their Assigns*, be and the same are hereby repealed, except so far as the Continuance of either of them may be necessary for carrying on or giving effect to any Proceedings at Law or in Equity pending at the Time of passing this Act, or for enforcing any Cause of Action, or Suit, or any Right or Contract, then subsisting.

Repeal of
former
Acts:
8 Anne,
c. 19;

41 G. 3,
c. 107;

54 G. 3,
c. 156.

Interpreta-
tion of Act.

II. And be it enacted, That in the Construction of this Act the Word "Book" shall be construed to mean and include every Volume, Part or Division of a Volume, Pamphlet, Sheet of Letter-press, Sheet of Music, Map, Chart, or Plan separately published; that the Words "Dramatic Piece" shall be construed to mean and include every Tragedy, Comedy, Play, Opera, Farce, or other scenic, musical, or dramatic Entertainment; that the Word "Copyright" shall be construed to mean the sole and exclusive Liberty of printing or otherwise multiplying Copies of any Subject to which the said Word is herein applied: that the Words "personal Representative" shall be construed to mean and include every Executor, Administrator, and next of Kin entitled to Administration; that the Word "Assigns" shall be construed to mean and include every

Person in whom the Interest of an Author in Copyright shall be vested, whether derived from such Author before or after the Publication of any Book, and whether acquired by Sale, Gift, Bequest, or by Operation of Law, or otherwise; that the Words "*British Dominions*" shall be construed to mean and include all Parts of the United Kingdom of *Great Britain and Ireland*, the Islands of *Jersey* and *Guernsey*, all Parts of the *East and West Indies*, and all the Colonies, Settlements, and Possessions of the Crown which now are or hereafter may be acquired; and that whenever in this Act, in describing any Person, Matter, or Thing, the Word importing the Singular Number or the Masculine Gender only is used, the same shall be understood to include and to be applied to several Persons as well as one Person, and Females as well as Males, and several Matters or Things as well as one Matter or Thing, respectively, unless there shall be something in the Subject or Context repugnant to such Construction.

III. And be it enacted, That the Copyright in every Book which shall after the passing of this Act be published in the Lifetime of its Author shall endure for the Natural Life of such Author, and for the further Term of Seven Years, commencing at the Time of his Death, and shall be the Property of such Author and his Assigns: Provided always, that if the said Term of Seven Years shall expire before the End of Forty-two Years from the first Publication of such Book, the Copyright shall in that Case endure for such Period of Forty-two Years; and that the Copyright in every Book which shall be published after the Death of its Author shall endure for the Term of Forty-two Years from the first Publication thereof, and shall be the Property of the Proprietor of the Author's Manuscript from which such Book shall be first published, and his Assigns.

IV. And whereas it is just to extend the Benefits of this Act to Authors of Books published before the passing thereof, and in which Copyright still subsists; be it enacted, That the Copyright which at the Time of passing this Act shall subsist in any Book theretofore published (except as hereinafter mentioned) shall be extended and endure for the full Term provided by this Act in Cases of Books thereafter published, and shall be the Property of the Person who at the Time of passing of this Act shall be the Proprietor of such Copyright: Provided always, that in all Cases in which such Copyright shall belong in whole or in part to a Publisher or other Person who shall have acquired it for other Consideration than that of natural Love and Affection, such Copyright shall not be extended by this Act, but shall endure for the Term which shall subsist therein at the Time of pass-

Endurance of Term of Copyright in any Book hereafter to be published in the Lifetime of the Author;

if published after the Author's Death.

In Cases of subsisting Copyright, the Term to be extended, except when it shall belong to an Assignee for other Consideration than natural Love and Affection; in which

Case it shall cease at the Expiration of the present Term, unless its Extension be agreed to between the Proprietor and the Author.

Judicial Committee of the Privy Council may license the Publication of Books which the Proprietor refuses to republish after Death of the Author.

Copies of Books published after the passing of this Act, and of all subsequent Editions, to be delivered within certain Times at the British Museum.

ing of this Act, and no longer, unless the Author of such Book, if he shall be living, or the personal Representative of such Author, if he shall be dead, and the Proprietor of such Copyright, shall, before the Expiration of such Term, consent and agree to accept the Benefits of this Act in respect of such Book, and shall cause a Minute of such Consent in the Form in that Behalf given in the Schedule to this Act annexed to be entered in the Book of Registry hereinafter directed to be kept, in which Case such Copyright shall endure for the full Term by this Act provided in Cases of Books to be published after the passing of this Act, and shall be the Property of such Person or Persons as in such Minute shall be expressed.

V. And whereas it is expedient to provide against the Suppression of Books of Importance to the Public; be it enacted, That it shall be lawful for the Judicial Committee of Her Majesty's Privy Council, on Complaint made to them that the Proprietor of the Copyright in any Book after the Death of its Author has refused to republish or to allow the Republication of the same, and that by reason of such Refusal such Book may be withheld from the Public, to grant a Licence to such Complainant to publish such Book, in such Manner and subject to such Conditions as they may think fit, and that it shall be lawful for such Complainant to publish such Book according to such Licence.

VI. And be it enacted, That a printed Copy of the whole of every Book which shall be published after the passing of this Act, together with all Maps, Prints, or other Engravings belonging thereto, finished and coloured in the same Manner as the best Copies of the same shall be published, and also of any second or subsequent Edition which shall be so published with any Additions or Alterations, whether the same shall be in Letter Press, or in the Maps, Prints, or other Engravings belonging thereto, and whether the first Edition to such Book shall have been published before or after the passing of this Act, and also of any second or subsequent Edition of every Book of which the first or some preceding Edition shall not have been delivered for the Use of the *British Museum*, bound, sewed, or stitched together, and upon the best Paper on which the same shall be printed, shall, within One Calendar Month after the Day on which any such Book shall first be sold, published, or offered for Sale within the Bills of Mortality, or within Three Calendar Months if the same shall first be sold, published, or offered for Sale in any other Part of the United Kingdom, or within Twelve Calendar Months after the same shall first be sold, published, or offered for Sale in any other Part of the *British Dominions*, be delivered, on behalf of the Publisher thereof, at the *British Museum*.

VII. And be it enacted, That every Copy of any Book which under the Provisions of this Act ought to be delivered as aforesaid shall be delivered at the *British Museum* between the Hours of Ten in the Forenoon and Four in the Afternoon on any Day except *Sunday, Ash Wednesday, Good Friday, and Christmas Day*, to one of the Officers of the said Museum, or to some Person authorized by the Trustees of the said Museum to receive the same, and such Officer or other Person receiving such Copy is hereby required to give a Receipt in Writing for the same, and such Delivery shall to all Intents and Purposes be deemed to be good and sufficient Delivery under the Provisions of this Act.

Mode of
delivering
at the
British
Museum.

VIII. And be it enacted, That a Copy of the whole of every Book, and of any second or subsequent Edition of every Book containing Additions and Alterations, together with all Maps and Prints belonging thereto, which after the passing of this Act shall be published, shall, on Demand thereof in Writing, left at the Place of Abode of the Publisher thereof at any Time within Twelve Months next after the Publication thereof, under the Hand of the Officer of the Company of Stationers who shall from Time to Time be appointed by the said Company for the Purposes of this Act, or under the Hand of any other Person thereto authorized by the Persons or Bodies Politic and Corporate, Proprietors and Managers of the Libraries following, (*videlicet*,) the *Bodleian Library at Oxford*, the Public Library at *Cambridge*, the Library of the Faculty of Advocates at *Edinburgh*, the Library of the College of the Holy and Undivided Trinity of Queen *Elizabeth near Dublin*, be delivered, upon the Paper on which the largest Number of Copies of such Book or Edition shall be printed for Sale, in the like Condition as the Copies prepared for Sale, by the Publisher thereof respectively, within One Month after Demand thereof in Writing as aforesaid, to the said Officer of the said Company of Stationers for the Time being, which Copies the said Officer shall and he is hereby required to receive at the Hall of the said Company, for the Use of the Library for which such Demand shall be made within such Twelve Months as aforesaid; and the said Officer is hereby required to give a Receipt in Writing for the same, and within One Month after any such Book shall be so delivered to him as aforesaid to deliver the same for the Use of such Library.

A copy of
every Book
to be de-
livered
within a
Month
after De-
mand to
the Officer
of the
Stationers
Company,
for the
following
Libraries:
the Bod-
leian at
Oxford,
the Public
Library
at Cam-
bridge, the
Faculty of
Advocates
at Edin-
burgh, and
that of
Trinity
College,
Dublin.

IX. Provided also, and be it enacted, That if any Publisher shall be desirous of delivering the Copy of such Book as shall be demanded on behalf of any of the said Libraries at such Library, it shall be lawful for him to deliver the same at such Library, free of Expense, to such Librarian or other Person

Publishers
may de-
liver the
Copies to
the Libra-
ries, in-

stead of
at the
Stationers
Company.

authorized to receive the same (who is hereby required in such Case to receive and give a Receipt in Writing for the same), and such Delivery shall to all Intents and Purposes of this Act be held as equivalent to a Delivery to the said Officers of the Stationers Company.

Penalty for
Default in
delivering
Copies for
the use
of the
Libraries.

X. And be it enacted, That if any Publisher of any such Book, or of any second or subsequent Edition of any such Book, shall neglect to deliver the same, pursuant to this Act, he shall for every such Default forfeit, besides the Value of such Copy of such Book or Edition which he ought to have delivered, a Sum not exceeding Five Pounds, to be recovered by the Librarian or other Officer (properly authorized) of the Library for the Use whereof such Copy should have been delivered, in a summary Way, on Conviction before Two Justices of the Peace for the County or Place where the Publisher making default shall reside, or by Action of Debt or other Proceeding of the like Nature, at the Suit of such Librarian or other Officer, in any Court of Record in the United Kingdom, in which Action, if the Plaintiff shall obtain a Verdict, he shall recover his Costs reasonably incurred, to be taxed as between Attorney and Client.

Book of
Registry
to be
kept at
Stationers'
Hall.

XI. And be it enacted, That a Book of Registry, wherein may be registered, as herein-after enacted, the Proprietorship in the Copyright of Books, and Assignments thereof, and in Dramatic and Musical Pieces, whether in Manuscript or otherwise, and Licences affecting such Copyright, shall be kept at the Hall of the Stationers Company, by the Officer appointed by the said Company for the Purposes of this Act, and shall at all convenient Times be open to the Inspection of any Person, on Payment of One Shilling for every Entry which shall be searched for or inspected in the said Book; and that such Officer shall, whenever thereunto reasonably required, give a Copy of any Entry in such Book, certified under his Hand, and impressed with the Stamp of the said Company, to be provided by them for that Purpose, and which they are hereby required to provide, to any Person requiring the same, on payment to him of the Sum of Five Shillings; and such Copies so certified and impressed shall be received in Evidence in all Courts, and in all summary Proceedings, and shall be *primâ facie* Proof of the Proprietorship or Assignment of Copyright or Licence as therein expressed, but subject to be rebutted by other Evidence, and in the Case of Dramatic or Musical Pieces shall be *primâ facie* Proof of the Right of Representation or Performance, subject to be rebutted as aforesaid.

Making
false Entry

XII. And be it enacted, That if any Person shall wilfully make or cause to be made any false Entry in the Registry

Book of the Stationers Company, or shall wilfully produce or cause to be tendered in Evidence, any Paper falsely purporting to be a Copy of any Entry in the said Book, he shall be guilty of an indictable Misdemeanor, and shall be punished accordingly.

in the
Book of
Registry,
a Misdemeanor.

XIII. And be it enacted, That after the passing of this Act it shall be lawful for the Proprietor of Copyright in any Book heretofore published, or in any Book hereafter to be published, to make Entry in the Registry Book of the Stationers Company of the Title of such Book, the Time of the first Publication thereof, the Name and Place of Abode of the Publisher thereof, and the Name and Place of Abode of the Proprietor of the Copyright of the said Book or of any portion of such Copyright in the Form in that behalf given in the Schedule to this Act annexed, upon Payment of the Sum of Five Shillings to the Officer of the said Company; and that it shall be lawful for every such Registered Proprietor to assign his Interest, or any portion of his Interest therein, by making Entry in the said Book of Registry of such Assignment, and of the Name and Place of Abode of the Assignee thereof, in the Form given in that Behalf in the said Schedule, on payment of the like Sum; and such Assignment so entered shall be effectual in Law to all Intents and Purposes whatsoever, without being subject to any Stamp or Duty, and shall be of the same Force and Effect as if such Assignment had been made by Deed.

Entries of
Copyright
may be
made in
the Book
of Re-
gistry.

XIV. And be it enacted, That if any Person shall deem himself aggrieved by any Entry made under colour of this Act in the said Book of Registry, it shall be lawful for such Person to apply by Motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in Term Time, or to apply by Summons to any Judge of either of such Courts in Vacation, for an Order that such Entry may be expunged or varied; and that upon any such Application by Motion or Summons to either of the said Courts, or to a Judge as aforesaid, such Court or Judge shall make such Order for expunging, varying, or confirming such Entry, either with or without costs, as to such Court or Judge shall seem just; and the Officer appointed by the Stationers Company for the Purposes of this Act, shall, on the Production to him of any such Order for expunging or varying any such Entry, expunge or vary the same according to the Requisitions of such Order.

Persons
aggrieved
by any
Entry in
the Book
of Registry
may apply
to a Court
of Law in
Term, or
Judge in
Vacation,
who may
order such
Entry to be
varied or
expunged.

XV. And be it enacted, That if any Person shall, in any Part of the *British* Dominions, after the passing of this Act, print or cause to be printed, either for Sale or Exportation, any Book in which there shall be subsisting Copyright, without the Consent in Writing of the Proprietor thereof, or shall

Remedy
for the
Piracy of
Books by
Action on
the Case.

import for Sale or Hire any such Book so having been unlawfully printed from Parts beyond the Sea, or knowing such Book to have been so unlawfully printed, or imported, shall sell, publish, or expose to Sale or Hire, or cause to be sold, published, or exposed to Sale or Hire, or shall have in his Possession for Sale or Hire, any such Book so unlawfully printed or imported, without such Consent as aforesaid, such Offender shall be liable to a special Action on the Case at the Suit of the Proprietor of such Copyright, to be brought in any Court of Record in that part of the *British* Dominions in which the offence shall be committed: Provided always, that in *Scotland* such Offender shall be liable to an Action in the Court of Session in *Scotland*, which shall and may be brought and prosecuted in the same Manner in which any other Action of Damages to the like amount may be brought and prosecuted there.

In Actions
for Piracy
the Defen-
dant to
give Notice
of the
Objections
to the
Plaintiff's
Title on
which he
means to
rely.

XVI. And be it enacted, That after the passing of this Act in any Action brought within the *British* Dominions against any Person for printing any such Book for Sale, Hire, or Exportation, or for importing, selling, publishing, or exposing to Sale or Hire, or causing to be imported, sold, published, or exposed to Sale or Hire, any such Book, the Defendant, on pleading thereto, shall give to the Plaintiff a Notice in Writing of any Objections on which he means to rely on the Trial of such Action; and if the nature of his defence be, that the Plaintiff in such Action was not the Author or first Publisher of the Book in which he shall by such Action claim Copyright, or is not the Proprietor of the Copyright therein, or that some other Person than the Plaintiff was the Author or first Publisher of such Book, or is the Proprietor of the Copyright therein, then the Defendant shall specify in such Notice the Name of the Person who he alleges to have been the Author or first Publisher of such Book, or the Proprietor of the Copyright therein, together with the Title of such Book, and the Time when and the Place where such Book was first published, otherwise the Defendant in such Action shall not at the Trial or Hearing of such Action be allowed to give any Evidence that the Plaintiff in such Action was not the Author or first Publisher of the Book in which he claims such Copyright as aforesaid, or that he was not the Proprietor of the Copyright therein; and at such Trial or Hearing no other Objection shall be allowed to be made on behalf of such Defendant than the Objections stated in such Notice, or that any other Person was the Author or first Publisher of such Book, or the Proprietor of the Copyright therein, than the Person specified in such Notice, or give in Evidence in support of his Defence any other Book than one

substantially corresponding in Title, Time, and Place of Publication with the Title, Time, and Place specified in such Notice.

XVII. And be it enacted, That after the passing of this Act it shall not be lawful for any Person not being the Proprietor of the Copyright, or some Person authorized by him, to import into any Part of the United Kingdom, or into any other Part of the *British* Dominions, for Sale or Hire, any printed Book first composed or written or printed and published in any Part of the said United Kingdom, wherein there shall be Copyright, and reprinted in any Country or Place whatsoever out of the *British* Dominions; and if any Person not being such Proprietor or Person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for Sale or Hire, any such printed Book, into any Part of the *British* Dominions, contrary to the true Intent and Meaning of this Act, or shall knowingly sell, publish, or expose to Sale or let to Hire, or have in his Possession for Sale or Hire, any such Book, then every such Book shall be forfeited, and shall be seized by any Officer of Customs or Excise, and the same shall be destroyed by such Officer; and every Person so offending, being duly convicted thereof before Two Justices of the Peace for the County or Place in which such Book shall be found, shall also for every such Offence forfeit the Sum of Ten Pounds, and Double the Value of every Copy of such Book which he shall so import or cause to be imported into any Part of the *British* Dominions, or shall knowingly sell, publish, or expose to Sale or let to Hire, or shall cause to be sold, published, or exposed to Sale or let to Hire, or shall have in his Possession for Sale or Hire, contrary to the true Intent and Meaning of this Act, Five Pounds to the Use of such Officer of Customs or Excise, and the Remainder of the Penalty to the Use of the Proprietor of the Copyright in such Book.

XVIII. And be it enacted, That when any Publisher or other Person shall, before or at the Time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the Proprietor of any Encyclopædia, Review, Magazine, Periodical Work, or Work published in a Series of Books or Parts, or any Book whatsoever, and shall have employed or shall employ any Persons to compose the same, or any Volumes, Parts, Essays, Articles, or Portions thereof, for Publication in or as Part of the same, and such Work, Volumes, Parts, Essays, Articles, or Portions shall have been or shall hereafter be composed under such Employment, on the Terms that the Copyright therein shall belong to such Proprietor, Projector, Publisher, or Conductor, and paid for by such Proprietor, Projector,

No Person except the Proprietor, &c., shall import into the *British* Dominions for Sale or Hire any Book first composed, &c., within the United Kingdom, and reprinted elsewhere, under Penalty of Forfeiture thereof, and also of 10% and Double the Value.

Books may be seized by Officers of Customs or Excise.

As to the Copyright in Encyclopædias, Periodicals, and Works published in a Series, Reviews, or Magazines.

Publisher, or Conductor, the Copyright in every such Encyclopædia, Review, Magazine, Periodical Work, and Work published in a Series of Books or Parts, and in every Volume, Part, Essay, Article, and Portion so composed and paid for, shall be the Property of such Proprietor, Projector, Publisher, or other Conductor, who shall enjoy the same Rights as if he were the actual Author thereof, and shall have such Term of Copyright therein as is given to the Authors of Books by this Act; except only that in the case of Essays, Articles, or Portions forming Part of and first published in Reviews, Magazines, or other Periodical Works of a like Nature, after the Term of Twenty-eight Years from the first Publication thereof respectively the Right of publishing the same in a separate Form shall revert to the Author for the Remainder of the Term given by this Act: Provided always, that during the Term of Twenty-eight Years the said Proprietor, Projector, Publisher, or Conductor shall not publish any such Essay, Article, or Portion separately or singly without the Consent previously obtained of the Author thereof, or his Assigns: Provided also, that nothing herein contained shall alter or affect the Right of any Person who shall have been or who shall be so employed as aforesaid to publish any such his Composition in a separate Form, who by any Contract, express or implied, may have reserved or may hereafter reserve to himself such Right; but every Author reserving, retaining, or having such Right shall be entitled to the Copyright in such Composition when published in a separate Form, according to this Act, without prejudice to the Right of such Proprietor, Projector, Publisher, or Conductor as aforesaid.

Proviso for Authors who have reserved the Right of publishing their Articles in a separate Form.

Proprietors of Encyclopædias, Periodicals, and Works published in a Series may enter at once at Stationers' Hall, and thereon have the Benefit of the Registration of the whole.

The Provisions of 3 & 4

W. 4, c. 15,

XIX. And be it enacted, That the Proprietor of the Copyright in any Encyclopædia, Review, Magazine, Periodical Work, or other Work published in a Series of Books or Parts, shall be entitled to all the Benefits of the Registration at Stationers' Hall under this Act, on entering in the said Book of Registry the Title of such Encyclopædia, Review, Periodical Work, or other Work published in a Series of Books or Parts, the Time of the first Publication of the First Volume, Number or Part thereof, or of the first Number or Volume first published after the passing of this Act in any such Work which shall have been published heretofore, and the Name and Place of Abode of the Proprietor thereof, and of the Publisher thereof, when such Publisher shall not also be the Proprietor thereof.

XX. And whereas an Act was passed in the Third Year of the Reign of His late Majesty, to amend the Law relating to Dramatic Literary Property, and it is expedient to extend the Term of the sole Liberty of representing Dramatic Pieces

given by that Act to the full Time by this Act provided for the Continuance of Copyright: And whereas it is expedient to extend to Musical Compositions the Benefits of that Act and also of this Act; be it therefore enacted, That the Provisions of the said Act of His late Majesty, and of this Act, shall apply to Musical Compositions, and that the Sole Liberty of representing or performing, or causing or permitting to be represented or performed, any Dramatic Piece or Musical Composition, shall endure and be the Property of the Author thereof, and his Assigns, for the Term in this Act provided for the Duration of Copyright in Books; and the Provisions hereinbefore enacted in respect of the Property of such Copyright, and of registering the same, shall apply to the Liberty of representing or performing any Dramatic Piece or Musical Composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public Representation or Performance of any Dramatic Piece or Musical Composition shall be deemed equivalent, in the Construction of this Act, to the first Publication of any Book: Provided always, that in case of any Dramatic Piece or Musical Composition in Manuscript, it shall be sufficient for the Person having the sole Liberty of representing or performing, or causing to be represented or performed the same, to register only the Title thereof, the Name and Place of Abode of the Author or Composer thereof, the Name and Place of Abode of the Proprietor thereof, and the Time and Place of its first Representation or Performance.

XXI. And be it enacted, That the Person who shall at any Time have the sole Liberty of representing such Dramatic Piece or Musical Composition shall have and enjoy the Remedies given and provided in the said Act of the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, passed to amend the Laws relating to Dramatic Literary Property, during the whole of his Interest therein, as fully as if the same were re-enacted in this Act.

XXII. And be it enacted, That no Assignment of the Copyright of any Book consisting of or containing a Dramatic Piece or Musical Composition shall be holden to convey to the Assignee the right of representing or performing such Dramatic Piece or Musical Composition, unless an Entry in the said Registry Book shall be made of such Assignment, wherein shall be expressed the Intention of the Parties that such Right should pass by such Assignment.

XXIII. And be it enacted, That all Copies of any Book wherein there shall be Copyright, and of which Entry shall have been made in the said Registry Book, and which shall have been unlawfully printed or imported without the Consent

extended to Musical Compositions, and the Term of Copyright as provided by this Act, applied to the Liberty of representing Dramatic Pieces and Musical Compositions.

Proprietors of right of Dramatic Representations shall have all the Remedies given by 3 & 4 W. 4, c. 15. Assignment of Copyright of a Dramatic Piece not to convey the Right of Representation. Books pirated

shall be-
come the
Property
of the
Proprietor
of the
Copyright,
and may be
recovered
by Action.

of the registered Proprietor of such Copyright, in Writing under his Hand first obtained, shall be deemed to be the Property of the Proprietor of such Copyright, and who shall be registered as such, and such registered Proprietor shall, after Demand thereof in Writing, be entitled to sue for and recover the same, or Damages for the Detention thereof, in an Action of Detinue, from any Party who shall detain the same, or to sue for and recover Damages for the Conversion thereof in an Action of Trover.

No Pro-
prietor of
Copyright
commenc-
ing after
this Act
shall sue
or proceed
for any
Infringe-
ment
before
making
Entry in
the Book
of Regis-
try.

XXIV. And be it enacted, That no Proprietor of Copyright in any Book which shall be first published after the passing of this Act shall maintain any Action or Suit, at Law or in Equity, or any Summary Proceeding, in respect of any Infringement of such Copyright, unless he shall, before commencing such Action, Suit, or proceeding, have caused an Entry to be made, in the Book of Registry of the Stationers Company, of such Book, pursuant to this Act: Provided always, that the Omission to make such Entry shall not affect the Copyright in any Book, but only the Right to sue or proceed in respect of the Infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the Remedies which the Proprietor of the sole Liberty of representing any Dramatic Piece shall have by virtue of the Act passed in the Third Year of the Reign of His late Majesty King *William* the Fourth, to amend the Laws relating to Dramatic Literary Property, or of this Act, although no Entry shall be made in the Book of Registry aforesaid.

Copyright
shall be
Personal
Property.

XXV. And be it enacted, That all Copyright shall be deemed Personal Property, and shall be transmissible by Bequest, or, in case of Intestacy, shall be subject to the same Law of Distribution as other Personal Property, and in *Scotland* shall be deemed to be Personal and Moveable Estate.

General
Issue.

XXVI. And be it enacted, That if any Action or Suit shall be commenced or brought against any Person or Persons whomsoever for doing or causing to be done anything in pursuance of this Act, the Defendant or Defendants in such Action may plead the General Issue, and give the special Matter in Evidence; and if upon such Action a Verdict shall be given for the Defendant, or the Plaintiff shall become nonsuited, or discontinue his Action, then the Defendant shall have and recover his full Costs, for which he shall have the same Remedy as a Defendant in any Case by Law hath; and that all Actions, Suits, Bills, Indictments, or Informations, for any Offence that shall be committed against this Act shall be brought, sued, and commenced within Twelve Calendar Months next after such Offence committed, or else the same shall be void and of none effect; provided that such Limitation

Limita-
tions of
Actions;

not to

of Time shall not extend or be construed to extend to any Actions, Suits, or other Proceedings which under the Authority of this Act shall or may be brought, sued, or commenced for or in respect of any Copies of Books to be delivered for the Use of the *British Museum*, or of any One of the Four Libraries hereinbefore mentioned.

extend to Actions, &c., in respect of the Delivery of Books.

XXVII. Provided always, and be it enacted, That nothing in this Act contained shall affect or alter the Rights of the Two Universities of *Oxford* and *Cambridge*, the Colleges or Houses of Learning within the same, the Four Universities in *Scotland*, the College of the Holy and Undivided Trinity of Queen *Elizabeth* near *Dublin*, and the several Colleges of *Eton*, *Westminster*, and *Winchester*, in any Copyrights heretofore and now vested or hereafter to be vested in such Universities and Colleges respectively, anything to the contrary herein contained notwithstanding.

Saving the Right of the Universities and the Colleges of *Eton*, *Westminster*, and *Winchester*.

XXVIII. Provided also, and be it enacted, That nothing in this Act contained shall affect, alter, or vary any Right subsisting at the Time of passing of this Act, except as herein expressly enacted; and all Contracts, Agreements, and Obligations made and entered into before the passing of this Act, and all Remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding.

Saving all subsisting Rights, Contracts, and Engagements.

XXIX. And be it enacted, That this Act shall extend to the United Kingdom of *Great Britain* and *Ireland*, and to every Part of the *British Dominions*.

Extent of the Act.

XXX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

Act may be amended this Session.

[*Repealed Statute Law Revision (2) Act, 1874.*]

SCHEDULE to which the preceding Act refers.

No. 1.

FORM of MINUTE of CONSENT to be entered at Stationers' Hall.

We, the undersigned, *A.B.* of _____, the Author of a certain Book, intituled *Y.Z.* [or the personal Representative of the Author, as the case may be], and *C.D.* of _____ do hereby certify, That we have consented and agreed to accept the Benefits of the Act passed in the Fifth Year of the Reign of Her Majesty Queen Victoria, Cap. _____, for the Extension of the Term of Copyright therein provided by the said Act, and hereby declare that such extended Term of Copyright therein is the Property of the said *A.B.* or *C.D.*

Dated this _____ Day of _____ 18 ____.

Witness

(Signed)

A.B.

C.D.

To the Registering Officer appointed by the Stationers Company.

No. 2.

FORM OF REQUIRING ENTRY OF PROPRIETORSHIP.

I *A.B.* of do hereby certify, That I am the Proprietor of the Copyright of a Book, intituled *Y.Z.*, and I hereby require you to make Entry in the Registry Book of the Stationers Company of my Proprietorship of such Copyright, according to the Particulars under-written.

Title of Book.	Name of Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
<i>Y.Z.</i>		<i>A.B.</i>	

Dated this day of 18 .
 Witness, *C.D.*

(Signed) *A.B.*

No. 3.

ORIGINAL ENTRY OF PROPRIETORSHIP OF COPYRIGHT OF A BOOK.

Time of making the Entry.	Title of Book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	<i>Y.Z.</i>	<i>A.B.</i>	<i>C.D.</i>	

No. 4.

FORM of CONCURRENCE of the PARTY assigning in any Book
previously registered.

I *A.B.* of being the Assigner of the Copyright of the Book
hereunder described, do hereby require you to make Entry of the
Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
<i>Y.Z.</i>	<i>A.B.</i>	<i>C.D.</i>

Dated this day of 18 .
(Signed) *A.B.*

No. 5.

FORM of ENTRY of ASSIGNMENT of COPYRIGHT in any Book
previously registered.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	<i>[Set out the Title of the Book, and refer to the Page of the Registry Book in which the original Entry of the Copyright thereof is made.]</i>	<i>A.B.</i>	<i>C.D.</i>

ILLEGAL PRACTICES AT ELECTIONS.

A. PARLIAMENTARY ELECTIONS.

46 & 47 VICT. c. 51, s. 9, SUB-S. 2, AND SS. 10, 64 (CORRUPT AND ILLEGAL PRACTICES PREVENTION ACT, 1883).

Sect. 9, sub-s. 2. Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such an election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

Sect. 10. A person guilty of an illegal practice, whether under the foregoing sections or under the provisions herein-after contained in this Act, shall, on summary conviction, be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act), held for or within the county or borough in which the illegal practice has been committed.

Sect. 18. Every bill, placard, or poster having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as afore-said, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is the candidate, or the election agent of the candidate, be guilty of an illegal practice, and if he is not the candidate, or the election agent of a candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Sect. 23. Where, on application made, it is shown to the High Court or to an Election Court by such evidence as seems to the Court sufficient—

(a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being a payment, engagement, employment, or contract in contravention of this Act, or being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Act, or of otherwise being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment or hiring; and

(b) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from want of good faith; and

(c) that such notice of the application has been given in the county or borough for which the election was held as the Court seems fit;

and under the circumstances it seems to the Court to be just that the candidate and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Sect. 64. . . . The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to municipal corporations or to the Poor Law, or under the Elementary Education Act, 1870, or under the Public Health Act, 1875, or under any other Acts for the time being in force (whether passed before or after the commencement of the Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above-mentioned, and includes any other municipal or parochial office, and the expression "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly.

33 & 34
Vict. c. 75.
38 & 39
Vict. c. 55.

58 & 59 VICT. C. 40 (CORRUPT AND ILLEGAL PRACTICES AMENDMENT ACT, 1895).

Sect. 1. Any person who, or the directors of any body or association corporate which, before or during any parliamentary election, shall, for the purpose of affecting the return of any candidate at such election, make or publish any false statement of fact in relation to the personal character or conduct of such candidate shall be guilty of an illegal practice within the

meaning of the provisions of the Corrupt and Illegal Practices Prevention Act, 1883, and shall be subject to all the penalties for and consequences of committing an illegal practice in the said Act mentioned, and the said Act shall be taken to be amended as if the illegal practice defined by this Act had been contained therein.

Sect. 2. No person shall be deemed to be guilty of such illegal practice if he can show that he had reasonable grounds for believing, and did believe, the statement made by him to be true.

Sect. 3. Any person who shall make or publish any false statement of fact as aforesaid may be restrained by interim or perpetual injunction by the High Court of Justice from any repetition of such false statement or any false statement of a similar character in relation to such candidate, and for the purpose of granting an interim injunction *prima facie* proof of the falsity of the statement will be sufficient.

B. MUNICIPAL ELECTIONS.

45 & 46 VICT. c. 50, s. 7 (MUNICIPAL CORPORATIONS ACT, 1882).

Sect. 7.

“Corporate office” means the office of mayor, alderman, councillor, elective auditor, or revising assessor.

“Municipal election” means an election to a corporate office.

47 & 48 VICT. c. 70, s. 6, SUB-S. 2, s. 7, s. 35, SUB-S. 1, s. 36,
SUB-S. 1, FIRST SCHEDULE.

Supra. Sect. 6, sub-s. 2 : *identical with s. 9, sub-s. 2 of 46 & 47 Vict. c. 51, except that word “municipal” is inserted before “election.”*

Supra. Sect. 7 : *identical with s. 10 (idem), except that for the words “whether under the foregoing sections or under the provisions hereinafter contained in this Act” are substituted “in reference to a municipal election.”*

Sect. 14 : *practically identical with s. 18 (idem).*

Sect. 20 : *practically identical with s. 23 (idem).*

Sect. 35. This Act and Part IV. of the Municipal Corporations Act, 1882, shall apply to a municipal election in the City of London, subject as follows :

(1.) For the purpose of such application “municipal election”

means an election to the office of mayor, alderman, common councilman, or sheriff, and includes the election of any officer elected by the mayor, aldermen, and liverymen in common hall, and the expression "corporate office" includes each of the aforesaid offices, and the expression "borough" shall be deemed to apply to the said city.

Sect. 36 (1.) Subject as hereinafter mentioned, the provisions of this Act and of Part IV. of the Municipal Corporations Act, 1882, as amended by this Act, shall extend to the elections for the offices mentioned in the first column of the First Schedule to this Act, as if re-enacted herein and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

FIRST SCHEDULE.

Elections to which this Act extends.

In England.

Office.

Member of local board as defined by the Public Health Act, 1875.

Member of Improvement Commissioners as defined by the Public Health Act, 1875.

Guardian elected under the Poor Law Amendment Act, 1834.

Member of School Board.

C. COUNTY, DISTRICT, AND PARISH COUNCIL ELECTIONS.

51 & 52 VICT. c. 41, s. 75 (LOCAL GOVERNMENT ACT, 1888).

Sect. 75. For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882, namely—

Part IV. (as amended by the Municipal Elections (Corrupt Practices) Act, 1884) . . . shall, so far as the same are unrepealed and are consistent with the provisions of the Act, apply as if they were herein re-enacted with the enactments amending the same in such terms and with such modifications

as are necessary to make them applicable to the said councils and their chairmen, members, committees and officers, and to the other provisions of this Act. . . .

56 & 57 VICT. C. 73, s. 48 (LOCAL GOVERNMENT ACT, 1894).

Sect. 48. At every election regulated by rules under this Act the Municipal Elections Corrupt and Illegal Practices Act, 1884, and sects. 74 & 75 and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts), shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election.

INDECENT PRINTS.

5 GEO. 4, C. 83, s. 4.

[1825.]

IV. And be it further enacted, That every Person wilfully exposing to view, in any Street, Road, Highway, or public Place, any obscene Print, Picture, or other indecent Exhibition, shall be deemed a Rogue and Vagabond, within the true Intent and Meaning of this Act; and it shall be lawful for any Justice of the Peace to commit such Offender (being thereof convicted before him by the Confession of such Offender, or by the Evidence on Oath of One or more credible Witness or Witnesses) to the House of Correction, there to be kept to hard Labour for any Time not exceeding Three Calendar Months.

1 & 2 VICT. C. 38, s. 2.

[1838.]

Sect. 2. And whereas by the said recited Act (i.e., *the 5 Geo. 4, c. 83, s. 4*), it is enacted, that every person wilfully exposing to view in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition, shall, on summary conviction thereof be liable to punishment as therein provided: And whereas doubts have arisen whether the exposing to public view in the windows of shops in streets, highways, or other public places, of any obscene print, picture, or other indecent exhibition, is an offence within the meaning of the said recited Act: Be it therefore declared and enacted,

that every person who shall wilfully expose or cause to be exposed to public view in the window or other part of any shop or other building situate in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition to public view within the intent and meaning of the said Act, and shall accordingly be liable to be proceeded against, and on conviction, to be punished under the provisions of the said Act.

20 & 21 VICT. c. 83.

An Act for more effectually preventing the Sale of Obscene Books, Pictures, Prints, and other Articles.

[25th August, 1857.]

WHEREAS it is expedient to give additional Powers for the Suppression of the Trade in Obscene Books, Prints, Drawings, and other Obscene Articles: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. It shall be lawful for any Metropolitan Police Magistrate or other Stipendiary Magistrate, or for any Two Justices of the Peace, upon Complaint made before him or them upon Oath that the Complainant has Reason to believe, and does believe, that any Obscene Books, Papers, Writings, Prints, Pictures, Drawings, or other Representations are kept in any House, Shop, Room, or other Place within the Limits of the Jurisdiction of any such Magistrate or Justices, for the Purpose of Sale or Distribution, Exhibition for Purposes of Gain, lending upon Hire, or being otherwise published for Purposes of Gain, which Complainant shall also state upon Oath that One or more Articles of the like Character have been sold, distributed, exhibited, lent, or otherwise published as aforesaid, at or in connection with such Place, so as to satisfy such Magistrate or Justices that the Belief of the said Complainant is well founded, and upon such Magistrate or Justices being also satisfied that any of such Articles so kept for any of the Purposes aforesaid are of such a Character and Description that the Publication of them would be a Misdemeanor, and proper to be prosecuted as such, to give Authority by Special

Justices, &c., may authorize Search of suspected Premises.

Warrant to any Constable or Police Officer into such House, Shop, Room, or other Place, with such Assistance as may be necessary, to enter in the Daytime, and, if necessary, to use Force, by breaking open Doors or otherwise, and to search for and seize all such Books, Papers, Writings, Prints, Pictures, Drawings, or other Representations as aforesaid found in such House, Shop, Room, or other Place, and to carry all the Articles so seized before the Magistrate or Justices issuing the said Warrant, or some other Magistrate or Justices exercising the same Jurisdiction; and such Magistrate or Justices shall thereupon issue a Summons calling upon the Occupier of the House or other Place which may have been so entered by virtue of the said Warrant to appear within Seven Days before such Police Stipendiary Magistrate or any Two Justices in Petty Sessions for the District, to show Cause why the Articles so seized should not be destroyed; and if such Occupier or some other Person claiming to be the Owner of the said Articles shall not appear within the Time aforesaid, or shall appear, and such Magistrate or Justice shall be satisfied that such Articles or any of them are of the Character stated in the Warrant, and that such or any of them have been kept for any of the Purposes aforesaid, it shall be lawful for the said Magistrate or Justices, and he or they are hereby required to order the Articles so seized, except such of them as he or they may consider necessary to be preserved as Evidence in some further Proceeding, to be destroyed at the Expiration of the Time hereinafter allowed for lodging an Appeal, unless Notice of Appeal as hereinafter mentioned be given, and such Articles shall be in the meantime impounded; and if such Magistrate or Justices shall be satisfied that the Articles seized are not of the Character stated in the Warrant, or have not been kept for any of the Purposes aforesaid, he or they shall forthwith direct them to be restored to the Occupier of the House or other Place in which they were seized.

Tender of
Amends,
&c.

II. No Plaintiff shall recover in any Action for any Irregularity, Trespass, or other wrongful Proceeding made or committed in the Execution of this Act, or in, under, or by virtue of any Authority hereby given, if Tender of sufficient Amends shall have been made by or on behalf of the Party who shall have committed such Irregularity, Trespass, or other wrongful Proceeding, before such Action brought; and in case no Tender shall have been made it shall be lawful for the Defendant in any such Action, by Leave of the Court where such Action shall depend, at any Time before Issue is joined, to pay into Court such Sum of Money as he shall think fit, whereupon such Proceeding, Order, and Adjudication shall be had and made in and by such Court as in other

Actions where Defendants are allowed to pay Money into Court.

III. No Action, Suit, or Information, or any other Proceed-
ing, of what Nature soever, shall be brought against any Person for anything done or omitted to be done in pursuance of this Act, or in the Execution of the Authorities under this Act, unless Notice in Writing shall be given by the Party intending to prosecute such Action, Suit, Information, or other Proceeding, to the intended Defendant, One Calendar Month at least before prosecuting the same, nor unless such Action, Suit, Information, or other Proceeding shall be brought or commenced within Three Calendar Months next after the Act or Omission complained of, or in case there shall be a Continuation of Damage, then within Three Calendar Months next after the doing such Damage shall have ceased. Limitation
of Actions.

IV. Any Person aggrieved by any Act or Determination of Appeal such Magistrate or Justices in or concerning the Execution of this Act, may appeal to the next General or Quarter Sessions for the County, Riding, Division, City, Borough, or Place in and for which such Magistrate or Justices shall have so acted, giving to the Magistrate or Justices of the Peace whose Act or Determination shall be appealed against Notice in Writing of such Appeal, and of the Grounds thereof, within Seven Days after such Act or Determination and before the next General or Quarter Sessions, and entering within such Seven Days into a Recognizance, with sufficient Surety, before a Justice of the Peace for the County, City, Borough, or Place in which such Act or Determination shall have taken place, personally to appear and prosecute such Appeal, and to abide the Order of and pay such Costs as shall be awarded by such Court of Quarter Sessions or any Adjournment thereof, and the Court at such General or Quarter Sessions shall hear and determine the Matter of such Appeal, and shall make such order therein as shall to the said Court seem meet; and such Court, upon hearing and finally determining such Appeal, shall and may, according to their Discretion, award such Costs to the Party appealing or appealed against as they shall think proper; and if such Appeal be dismissed or decided against the Appellant or be not prosecuted, such Court may order the Articles seized forthwith to be destroyed: Provided always, that it shall not be lawful for the Appellant on the Hearing of any such Appeal to go into or give Evidence of any other Grounds of Appeal against any such Order, Act, or Determination than those set forth in such Notice of Appeal.

V. This Act shall not extend to *Scotland*.

LIBEL AND REGISTRATION.

32 GEO. 3, c. 60 (Fox's Act). [1792.]

An Act to remove Doubts respecting the Functions of Juries in Cases of Libel.

On the Trial of an Indictment for a Libel, the Jury may give a general Verdict upon the whole Matter put in Issue.

WHEREAS doubts have arisen whether on the Trial of an Indictment or Information for the making or publishing any Libel, where an Issue or Issues are joined between the King and the Defendant or Defendants, on the Plea of Not guilty pleaded, it be competent to the Jury impanelled to try the same to give their Verdict upon the whole Matter in Issue: Be it therefore declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, on every such Trial, the Jury sworn to try the Issue may give a general Verdict of Not guilty upon the whole Matter put in Issue upon such Indictment or Information; and shall not be required or directed, by the Court or Judge before whom such Indictment or Information shall be tried, to find the Defendant or Defendants Guilty, merely on the Proof of the Publication by such Defendant or Defendants of the Paper charged to be a Libel, and of the Sense ascribed to the same in such Indictment or Information.

But the Court shall give their Opinion and Directions.

II. Provided always, That, on every such Trial, the Court or Judge before whom such Indictment or Information shall be tried, shall, according to their or his Discretion, give their or his Opinion and Directions to the Jury on the Matter in Issue between the King and the Defendant or Defendants, in like Manner as in other Criminal Cases.

Jury may find a special Verdict.

III. Provided also, That nothing herein contained shall extend, or be construed to extend, to prevent the Jury from finding a Special Verdict, in their Discretion, as in other Criminal Cases.

IV. Provided also, That in case the Jury shall find the Defendant or Defendants Guilty, it shall and may be lawful for the said Defendant or Defendants to move in Arrest of Judgment, on such Ground and in such Manner as by Law he or they might have done before the passing of this Act; any Thing herein contained to the contrary notwithstanding.

[For 39 Geo. 3, c. 79, s. 29 (*Preservation of Copies by Printer*), see 32 & 33 Vict. c. 24, schedule II., where it is re-enacted.]

60 GEO. 3, c. 8, ss. 1 and 2.

An Act for the more effectual Prevention and Punishment of blasphemous and seditious Libels. [30th December, 1819.]

WHEREAS it is expedient to make more effectual Provision for the Punishment of blasphemous and seditious Libels; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, in every Case in which any Verdict or Judgment by Default shall be had against any Person for composing, printing or publishing any blasphemous Libel, or any seditious Libel, tending to bring into Hatred or Contempt the Person of His Majesty, His Heirs or Successors, or The Regent, or the Government and Constitution of the United Kingdom as by Law established, or either House of Parliament, or to excite His Majesty's Subjects to attempt the Alteration of any Matter in Church or State as by Law established, otherwise than by lawful Means, it shall be lawful for the Judge, or the Court before whom or in which such Verdict shall have been given, or the Court in which such Judgment by Default shall be had, to make an order for the Seizure and carrying away and detaining in safe Custody, in such Manner as shall be directed in such Order, all Copies of the Libel which shall be in the Possession of the Person against whom such Verdict or Judgment shall have been had, or in the Possession of any other Person named in the Order for his Use; Evidence upon Oath having been previously given to the Satisfaction of such Court or Judge, that a Copy or Copies of the said Libel is or are in the Possession of such other Person for the Use of the Person against whom such Verdict or Judgment shall have been had as aforesaid; and in every such Case it shall be lawful for any Justice of the Peace, or for any Constable or other Peace Officer acting under any such Order, or for any Person or Persons acting with or in Aid of any such Justice of the Peace, Constable, or other Peace Officer, to search for any Copies of such Libel in any House, Building, or other Place whatsoever belonging to the Person against whom any such Verdict or Judgment shall have been had, or to any other Person so named, in whose Possession any Copies of any such Libel, belonging to the Person against whom any such Verdict or Judgment shall have been had, shall be; and in case Admission shall be refused or not obtained within a reasonable Time after it shall have been first demanded, to

Court to make Order for the Seizure of Copies of the Libel in Possession of the Persons against whom Verdicts shall have been had, &c.

enter by Force by Day into any such House, Building, or Place whatsoever, and to carry away all Copies of the Libel there found, and to detain the same in safe Custody until the same shall be restored under the Provisions of this Act, or disposed of according to any further Order made in relation thereto.

Copies of
Libels so
seized to
be restored
if Judgment
for
Defendant;
otherwise
to be dis-
posed of as
the Court
shall
direct.

II. And be it further enacted, That if in any such Case as aforesaid Judgment shall be arrested, or if, after Judgment shall have been entered, the same shall be reversed upon any Writ of Error, all Copies so seized shall be forthwith returned to the Person or Persons from whom the same shall have been so taken as aforesaid, free of all Charge and Expence, and without the Payment of any Fees whatever; and in every Case in which final Judgment shall be entered upon the Verdict so found against the Person or Persons charged with having composed, printed, or published such Libel, then all Copies so seized shall be disposed of as the Court in which such Judgment shall be given shall order and direct.

[For 6 & 7 Will. 4, c. 76, s. 19 (*Discovery of Printer or Publisher of Newspaper*), and for 2 & 3 Vict. c. 12, s. 2 (*Imprint*), see 32 & 33 Vict. c. 24, where they are re-enacted.]

3 & 4 VICT. c. 9.

An Act to give summary Protection to Persons employed in the Publication of Parliamentary Papers. [14th April, 1839.]

WHEREAS it is essential to the due and effectual Exercise and discharge of the Functions and Duties of Parliament, and to the Promotion of wise Legislation, that no Obstructions or Impediments should exist to the Publication of such of the Reports, Papers, Votes, or Proceedings of either House of Parliament as such House of Parliament may deem fit or necessary to be published: And whereas Obstructions or Impediments to such Publication have arisen, and hereafter may arise, by means of Civil or Criminal Proceedings being taken against Persons employed by or acting under the Authority of the Houses of Parliament, or One of them, in the Publication of such Reports, Papers, Votes, or Proceedings; by reason

and for Remedy whereof it is expedient that more speedy Protection should be afforded to all Persons acting under the Authority aforesaid, and that all such Civil or Criminal Proceedings should be summarily put an end to and determined in manner herein-after mentioned: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for any Person or Persons who now is or are, or hereafter shall be, a Defendant or Defendants in any Civil or Criminal Proceeding commenced or prosecuted in any Manner soever, for or on account or in respect of the Publication of any such Report, Paper, Votes, or Proceedings by such Person or Persons, or by his, her, or their Servant or Servants, by or under the Authority of either House of Parliament, to bring before the Court in which such Proceeding shall have been or shall be so commenced or prosecuted, or before any Judge of the same (if One of the Superior Courts at *Westminster*), first giving Twenty-four Hours' Notice of his Intention so to do to the Prosecutor or Plaintiff in such Proceeding, a Certificate under the Hand of the Lord High Chancellor of *Great Britain*, or the Lord Keeper of the Great Seal, or of the Speaker of the House of Lords, for the Time being, or of the Clerk of the Parliaments, or of the Speaker of the House of Commons, or of the Clerk of the same House, stating that the Report, Paper, Votes, or Proceedings, as the Case may be, in respect whereof such Civil or Criminal Proceeding shall have been commenced, or prosecuted, was published by such Person or Persons, or by his, her, or their Servant or Servants, by Order or under the Authority of the House of Lords or of the House of Commons, as the Case may be, together with an Affidavit verifying such Certificate; and such Court or Judge shall thereupon immediately stay such Civil or Criminal Proceeding, and the same, and every Writ or Process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Act.

II. And be it enacted, That in case of any Civil or Criminal Proceeding hereafter to be commenced or prosecuted for or on account or in respect of the Publication of any Copy of such Report, Paper, Votes, or Proceedings, it shall be lawful for the Defendant or Defendants at any Stage of the Proceedings to lay before the Court or Judge such Report, Paper, Votes, or Proceedings, and such Copy, with an Affidavit verifying such Report, Paper, Votes, or Proceedings, and the Correctness of such Copy, and the Court or Judge shall immediately stay such Civil or Criminal Proceeding, and the same, and every

Proceed-
ings
Criminal
or Civil,
against
Persons for
Publication
of Papers
printed by
Order of
Parlia-
ment, to
be stayed,
upon Deliv-
ery of a
Certificate
and Affi-
davit to
the Effect
that such
Publica-
tion is by
Order of
either
House of
Parlia-
ment.

Proceed-
ings to be
stayed
when com-
menced in
respect of
a Copy of
an authen-
ticated
Report, &c.

Writ or Process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Act.

In Proceedings for printing any Extract or Abstract of a Paper, it may be shown that such Extract was bonâ fide made.

Act not to affect the Privileges of Parliament.

III. And be it enacted, That it shall be lawful in any Civil or Criminal Proceeding to be commenced or prosecuted for printing any Extract from or Abstract of such Report, Paper, Votes, or Proceedings, to give in Evidence under the General Issue such Report, Paper, Votes, or Proceedings, and to show that such Extract or Abstract was published *bonâ fide* and without Malice; and if such shall be the Opinion of the Jury, a Verdict of Not guilty shall be entered for the Defendant or Defendants.

IV. Provided always, and it is hereby expressly declared and enacted, That nothing herein contained shall be deemed or taken, or held or construed, directly or indirectly, by Implication or otherwise, to affect the Privileges of Parliament in any Manner whatsoever.

6 & 7 VICT. C. 96 (LORD CAMPBELL'S ACT).

An Act to amend the Law respecting defamatory Words and Libel. [24th August, 1843.]

Offer of an Apology admissible in Evidence in mitigation of Damages.

For the better Protection of private Character, and for more effectually securing the Liberty of the Press, and for better preventing Abuses in exercising the said Liberty: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in any Action for Defamation it shall be lawful for the Defendant (after Notice in Writing of his Intention so to do, duly given to the Plaintiff at the Time of filing or delivering the Plea in such Action) to give in Evidence, in mitigation of Damages, that he made or offered an Apology to the Plaintiff for such Defamation before the Commencement of the Action, or as soon afterwards as he had an Opportunity of doing so, in case the Action shall have been commenced before there was an Opportunity of making or offering such Apology.

In an Action against a Newspaper for Libel,

II. And be it enacted, That in an Action for a Libel contained in any public Newspaper or other periodical Publication it shall be competent to the Defendant to plead that such Libel was inserted in such Newspaper or other periodical

Publication without actual Malice, and without gross Negligence, and that before the Commencement of the Action, or at the earliest Opportunity afterwards, he inserted in such Newspaper or other periodical Publication a full Apology for the said Libel, or, if the Newspaper or periodical Publication in which the said Libel appeared should be ordinarily published at Intervals exceeding One Week, had offered to publish the said Apology in any Newspaper or periodical Publication to be selected by the Plaintiff in such Action; and that every such Defendant shall upon filing such Plea be at liberty to pay into Court a Sum of Money by way of Amends for the Injury sustained by the Publication of such Libel, and such Payment into Court shall be of the same Effect and be available in the same Manner and to the same Extent, and be subject to the same Rules and Regulations as to Payment of Costs and the Form of Pleading, except so far as regards the pleading of the additional Facts herein-before required to be pleaded by such Defendant, as if Actions for Libel had not been excepted from the personal Actions in which it is lawful to pay Money into Court under an Act passed in the Session of Parliament held in the Fourth Year of His late Majesty, intituled *An Act for the further Amendment of the Law and the better Advancement of Justice*; and that to such Plea to such Action it shall be competent to the Plaintiff to reply generally, denying the whole of such Plea.

the Defendant may plead that it was inserted without Malice and without Neglect, and may pay Money into Court as Amends.

3 & 4 W. 4, c. 42.

[*Words in italics were repealed by 42 & 43 Vict. c. 59, Schedule, Part II., and 46 & 47 Vict. c. 49, s. 4.*]

III. And be it enacted, That if any Person shall publish or threaten to publish any Libel upon any other Person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any Matter or Thing touching any other Person, with Intent to extort any Money or Security for Money, or any valuable Thing from such or any other Person, or with Intent to induce any Person to confer or procure for any Person any Appointment or Office of Profit or Trust, every such Offender, on being convicted thereof, shall be liable to be imprisoned, with or without Hard Labour, in the Common Gaol or House of Correction, for any Term not exceeding Three Years: Provided always, that nothing herein contained shall in any Manner alter or affect any Law now in force in respect of the sending or Delivery of threatening Letters or Writings.

Publishing or threatening to publish a Libel, or proposing to abstain from publishing any Thing, with Intent to extort Money, punishable by Imprisonment and Hard Labour.

IV. And be it enacted, That if any Person shall maliciously publish any defamatory Libel knowing the same to be false, every such Person, being convicted thereof, shall be liable to

False defamatory Libel

punishable
by Im-
prisonment
and Fine;

Malicious
defamatory
Libel, by
Imprison-
ment or
Fine.

Proceed-
ings upon
the Trial
of an In-
dictment
or Informa-
tion for a
defamatory
Libel.

Double
Plea.

Proviso as
to Plea of
Not Guilty
in Civil and
Criminal
Proceed-
ings.

Evidence
to rebut
prima
facie Case
of Publica-
tion by an
Agent.

be imprisoned in the Common Gaol or House of Correction for any Term not exceeding Two Years, and to pay such Fine as the Court shall award.

V. And be it enacted, That if any Person shall maliciously publish any defamatory Libel, every such Person, being convicted thereof, shall be liable to Fine or Imprisonment, or both, as the Court may award, such Imprisonment not to exceed the Term of One Year.

VI. And be it enacted, That on the Trial of any Indictment or Information for a defamatory Libel, the Defendant having pleaded such Plea as herein-after mentioned, the Truth of the Matters charged may be inquired into, but shall not amount to a Defence, unless it was for the Public Benefit that the said Matters charged should be published; and that to entitle the Defendant to give Evidence of the Truth of such Matters charged as a Defence to such Indictment or Information it shall be necessary for the Defendant, in pleading to the said Indictment or Information, to allege the Truth of the said Matters charged in the Manner now required in pleading a Justification to an Action for Defamation, and further to allege that it was for the Public Benefit that the said Matters charged should be published, and the particular Fact or Facts by Reason whereof it was for the Public Benefit that the said Matters charged should be published, to which Plea the Prosecutor shall be at liberty to reply generally, denying the whole thereof; and that if after such Plea the Defendant shall be convicted on such Indictment or Information it shall be competent to the Court, in pronouncing Sentence, to consider whether the Guilt of the Defendant is aggravated or mitigated by the said Plea, and by the Evidence given to prove or to disprove the same: Provided always, that the Truth of the Matters charged in the alleged Libel complained of by such Indictment or Information shall in no Case be inquired into without such Plea of Justification: Provided also, that in addition to such Plea, it shall be competent to the Defendant to plead a Plea of Not Guilty: Provided also, that nothing in this Act contained shall take away or prejudice any Defence under the Plea of Not Guilty which it is now competent to the Defendant to make under such Plea to any Action or Indictment or Information for defamatory Words or Libel.

VII. And be it enacted, That whensoever, upon the Trial of any Indictment or Information for the Publication of a Libel, under the Plea of Not Guilty, Evidence shall have been given which shall establish a presumptive Case of Publication against the Defendant by the Act of any other person by his Authority, it shall be competent to such Defendant to prove that such Publication was made without his Authority, Consent,

or Knowledge, and that the said Publication did not arise from Want of due Care or Caution on his Part.

VIII. And be it enacted, That in the Case of any Indictment or Information by a private Prosecutor for the Publication of any defamatory Libel, if Judgment shall be given for the Defendant, he shall be entitled to recover from the Prosecutor the Costs sustained by the said Defendant by reason of such Indictment or Information; and that upon a special Plea of Justification to such Indictment or Information, if the Issue be found for the Prosecutor, he shall be entitled to recover from the Defendant the Costs sustained by the Prosecutor by reason of such Plea, such Costs so to be recovered by the Defendant or Prosecutor respectively to be taxed by the proper Officer of the Court before which the said Indictment or Information is tried.

On Prosecution for private Libel, Defendant entitled to Costs on Acquittal.

IX. And be it enacted, That wherever throughout this Act, in describing the Plaintiff or the Defendant, or the Party affected or intended to be affected by the Offence, Words are used importing the Singular Number or the Masculine Gender only, yet they shall be understood to include several Persons as well as One Person, and Females as well as Males, unless when the Nature of the Provision or the Context of the Act shall exclude such Construction.

Interpretation of Act.

X. And be it enacted, That this Act shall take effect from the First Day of *November* next; and that nothing in this Act contained shall extend to *Scotland*.

Commencement and Extent of Act.

8 & 9 VICT. c. 75.

An Act to amend an Act passed in the Session of Parliament held in the Sixth and Seventh Years of the Reign of Her present Majesty, intituled An Act to amend the Law respecting defamatory Words and Libel. [31st July, 1845.]

WHEREAS by an Act passed in the Session of Parliament held in the Sixth and Seventh Years of the Reign of Her present Majesty, intituled *An Act to amend the Law respecting defamatory Words and Libel*, it is, amongst other things, enacted and provided, that the Defendant in an Action for a Libel contained in any public Newspaper or other periodical Publication may plead certain Matters therein mentioned, and may upon filing such Plea be at liberty to pay into Court a Sum of Money by way of Amends for the Injury sustained by the Publication

6 & 7 Vict. c. 96.

of such Libel; and it is thereby further enacted, that such Payment into Court shall be of the same Effect, and be available in the same Manner and to the same Extent, and be subject to the same Rules and Regulations as to Payment of Costs and the Form of Pleading, except so far as regards the pleading of the additional Facts thereinbefore required to be pleaded by such Defendant, as if Actions for Libel had not been excepted from the personal Actions in which it is lawful to pay Money into Court, under an Act passed in the Session of Parliament held in the Fourth Year of His late Majesty, intituled *An Act for the further Amendment of the Law, and the better Advancement of Justice*: And whereas the said Act of the Fourth Year of the Reign of His late Majesty relates only to Proceedings in the Superior Courts in *England*, but by an Act passed in the Session of Parliament held in the Third and Fourth Years of the Reign of Her present Majesty, intituled *An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for the further Advancement of Justice in Ireland*, a like Provision is made for Payment of Money into Court in all personal Actions pending in any of the Superior Courts in *Ireland*, as is contained in the said Act of the Fourth Year of the Reign of His late Majesty in regard to Actions pending in the Superior Courts in *England*, with a like Exception of Actions for Libel; and it is expedient to prevent any Doubts as to the Application of the said recited Act of the Sixth and Seventh Years of the Reign of Her present Majesty to Actions pending in the Superior Courts in *Ireland*, which may be created by reason of the Omission of a Reference in the last-mentioned Act to the said Act of the Third and Fourth Years of the Reign of Her present Majesty: Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That when in any Action pending in the Superior Courts in *Ireland* for a Libel contained in any public Newspaper or other periodical Publication the Defendant shall plead the Matters allowed to be pleaded by the said first-mentioned Act, and shall on filing such Plea pay Money into Court as provided by such Act, such Payment into Court shall be of the same Effect, and be available in the same Manner and to the same Extent, and be subject to the same Rules and Regulations now in force or hereafter to be made as to Payment of Costs and the Form of Pleading, except so far as regards the pleading of the additional Facts so required to be pleaded by such Defendant, as if Actions for Libel had not been excepted from the personal

3 & 4 W. 4,
c. 42.

3 & 4 Vict.
c. 105.

In Cases of
Action for
Libel in
Ireland,
where De-
fendant
shall plead
Matters
allowed by
3 & 4 W. 4,
c. 42, and
pay Money
into Court,
such Pay-
ment to be
of same

Actions in which it is lawful to pay Money into Court under the said recited Act of the Third and Fourth Years of the Reign of Her present Majesty.

II. And be it declared and enacted, That it shall not be competent to any Defendant in such Action, whether in *England* or in *Ireland*, to file any such Plea, without at the same Time making a Payment of Money into Court by way of Amends as provided by said Act, but every such Plea so filed without Payment of Money into Court shall be deemed a Nullity, and may be treated as such by the Plaintiff in the Action.

Effect as if required by said Act.

Defendant not to file such Plea without paying Money into Court by way of Amends.

[Words as "provided by said Act" were repealed by 42 & 43 Vict. c. 59, Schedule, Part II., and 46 & 47 Vict. c. 49, s. 4.]

32 & 33 VICT. c. 24.

An Act to repeal certain Enactments relating to Newspapers, Pamphlets, and other Publications, and to Printers, Type-founders, and Reading Rooms. [12th July, 1869.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Acts and parts of Acts in first Schedule repealed, except as in second Schedule.

1. The Acts and parts of Acts described in the first schedule to this Act are hereby repealed, but the provisions of the said Acts which are set out in the second schedule to this Act shall continue in force in the same manner as if they were enacted in the body of this Act; and this Act shall not affect the validity or invalidity of anything already done or suffered, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, and all such remedies and proceedings may be had and continued in the same manner as if this Act had not passed.

2. This Act may be cited as The Newspapers, Printers, and Reading Rooms Repeal Act, 1869.

Short title.

[The important portion of this Act is the Second Schedule, in which 39 Geo. 3, c. 79, s. 29 (*Preservation of Copies*) (1799), 6 & 7 Will. 4, c. 76, s. 19 (*Discovery*) (1836), and 2 & 3 Vict. c. 12, s. 2 (*Imprint*) (1838), are re-enacted.]

FIRST SCHEDULE.

Date of Act.	Title of Act, and part repealed.
36 Geo. 3, c. 8.	An Act for the more effectually preventing seditious meetings and assemblies.
39 Geo. 3, c. 79, in part.	<div> An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices </div> <div> In part, namely,—sections fifteen to thirty-three, both inclusive, and so much of sections thirty-four to thirty-nine as relates to the above-mentioned sections. </div>
51 Geo. 3, c. 65.	An Act to explain and amend an Act passed in the thirty-ninth year of His Majesty's reign, intituled "An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices," so far as respects certain penalties on printers and publishers.
55 Geo. 3, c. 101, in part.	<div> An Act to regulate the collection of stamp duties and matters in respect of which licences may be granted by the commissioners of stamps in Ireland </div> <div> In part, namely,—Section thirteen. </div>
60 Geo. 3, and 1 Geo. 4, c. 9.	An Act to subject certain publications to the duties of stamps upon newspapers, and to make other regulations for restraining the abuses arising from the publication of blasphemous and seditious libels.
11 Geo. 4, and 1 Will. 4, c. 73.	An Act to repeal so much of an Act of the sixtieth year of His late Majesty King George the Third, for the more effectual prevention and punishment of blasphemous and seditious libels, as relates to the sentence of banishment for the second offence, and to provide some further remedy against the abuse of publishing libels.

Date of Act.	Title of Act, and part repealed.
6 & 7 Will. 4, c. 76, in part.	<div> <div>An Act to reduce the duties on newspapers, and to amend the laws relating to the duties on newspapers and advertisements .</div> <div> In part, namely,— Except sections one to four (both inclusive), sections thirty-four and thirty-five, and the schedule. </div> </div>
2 & 3 Vict. c. 12.	An Act to amend an Act of the thirty-ninth year of King George the Third, for the more effectual suppression of societies established for seditious and treasonable purposes, and for preventing treasonable and seditious practices, and to put an end to certain proceedings now pending under the said Act.
5 & 6 Vict. c. 82, in part.	<div> <div>An Act to assimilate the stamp duties in Great Britain and Ireland, and to make regulations for collecting and managing the same until the tenth day of October one thousand eight hundred and forty-five</div> <div> In part, namely,— The following words in section twenty “and also licence to any person to keep any printing presses and types for printing in Ireland.” </div> </div>
9 & 10 Vict. c. 33, in part.	<div> <div>An Act to amend the laws relating to corresponding societies and the licensing of lecture rooms</div> <div> In part, namely,— So far as it relates to any proceedings under the enactments repealed by this schedule. </div> </div>
16 & 17 Vict. c. 59, in part.	<div> <div>An Act to repeal certain stamp duties and to grant others in lieu thereof, to amend the laws relating to stamp duties, and to make perpetual certain stamp duties in Ireland</div> <div> In part, namely,— So much of section twenty as make perpetual the provisions of 5 & 6 Vict. c. 82, repealed by this Act. </div> </div>

SECOND SCHEDULE.

The enactments in this schedule, with the exception of sect. 19 of 6 & 7 Will. 4, c. 76, do not apply to Ireland.

39 Geo. 3, c. 79.

Section twenty-eight.

Papers printed by authority of Parliament. Nothing in this Act contained shall extend or be construed to extend to any papers printed by the authority and for the use of either House of Parliament.

Section twenty-nine.

Printers to keep a copy of every paper, and write thereon the name and abode of their employer. Every person who shall print any paper for hire, reward, gain, or profit, shall carefully preserve and keep one copy (at least) of every paper so printed by him or her, on which he or she shall write, or cause to be written or printed, in fair and legible characters, the name and place of abode of the person or persons by whom he or she shall be employed to print the same; and every person printing any paper for hire, reward, gain, or profit, who shall omit or neglect to write, or cause to be written or printed as aforesaid, the name and place of his or her employer on one of such printed papers, or to keep or preserve the same for the space of six calendar months next after the printing thereof, or to produce and show the same to any justice of the peace who within the said space of six calendar months shall require to see the same, shall for every such omission, neglect, or refusal forfeit and lose the sum of twenty pounds.

Penalty of 20*l.* for neglect.

Section thirty-one.

Not to extend to impressions of engravings. Nothing herein contained shall extend to the impression of any engraving, or to the printing by letter-press of the name, or the name and address, or business or profession, of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise.

Section thirty-four.

Limitation. No person shall be prosecuted or sued for any penalty imposed by this Act, unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred.

Part of section thirty-five.

Recovery of penalties. And any pecuniary penalty imposed by this Act, and not exceeding the sum of twenty pounds, shall and may be recovered before any justice or justices of the peace for the county, stewardry, riding, division, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way.

Section thirty-six.

All pecuniary penalties herein-before imposed by this Act shall, when recovered in a summary way before any justice, be applied and disposed of in manner herein-after mentioned; that is to say, one moiety thereof to the informer before any justice, and the other moiety thereof to His Majesty, his heirs and successors.

Applica-
tion of
penalties.

51 Geo. 3, c. 65.

Section three.

Nothing in the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, or in this Act contained shall extend or be construed to extend to require the name and residence of the printer to be printed upon any bank note, or bank post bill of the Governor and Company of the Bank of England, upon any bill of exchange, or promissory note, or upon any bond or other security for payment of money, or upon any bill of lading, policy of insurance, letter of attorney, deed, or agreement, or upon any transfer or assignment of any public stocks, funds, or other securities, or upon any transfer or assignment of the stocks of any public corporation or company authorized or sanctioned by Act of Parliament, or upon any dividend warrant of or for any such public or other stocks, funds, or securities, or upon any receipt for money or goods, or upon any proceeding in any court of law or equity, or in any inferior court, warrant, order, or other papers printed by the authority of any public board or public officer in the execution of the duties of their respective offices, notwithstanding the whole or any part of the said several securities, instruments, proceedings, matters, and things aforesaid shall have been or shall be printed.

Name and
residence
of printers
not re-
quired to
be put to
bank notes,
bills, &c.,
or to any
paper
printed by
authority
of any
public
board or
public
office.

6 & 7 Will. 4, c. 76.

Section nineteen.

If any person shall file any bill in any court for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compellable to make the discovery required: provided always, that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in that proceeding for which the discovery is made.

Discovery
of proprie-
tors, prin-
ters, or
publishers
of news-
papers may
be enforced
by bill, &c.

2 & 3 Vict. c. 12.

Section two.

Every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon

Penalty

printers for not printing their name and residence on every paper or book, and on persons publishing the same.

upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum not more than five pounds: Provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out of the operation of the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, either in the said Act or by any Act made for the amendment thereof.

Section three.

As to books or papers printed at the university presses.

In the case of books or papers printed at the University Press of Oxford, or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, shall print the following words, "Printed at the University Press, Oxford," or "The Pitt Press, Cambridge," as the case may be.

Section four.

No actions for penalties to be commenced except in the name of the Attorney General in England or the Queen's Advocate in Scotland.

Provided always, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine, penalty or forfeiture made or incurred or which may hereafter be incurred under the provisions of this Act, unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney General or Solicitor General in that part of Great Britain called England, or Her Majesty's Advocate for Scotland (as the case may be respectively); and if any action, bill, plaint, or information shall be commenced, prosecuted, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had are hereby declared and the same shall be null and void to all intents and purposes.

9 & 10 Vict. c. 33.

Section one.

Proceedings shall not be commenced unless in the name of the law

It shall not be lawful for any person or persons to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine which may hereafter be incurred under the provisions of the Act of the thirty-ninth year of King George the Third, chapter seventy-nine, set out in this Act

unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney General or Solicitor General in England or Her Majesty's Advocate in Scotland, and every action, bill, plaint, or information which shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is in that behalf before mentioned, and every proceeding thereupon had, shall be null and void to all intents and purposes.

44 & 45 VICT. c. 60.

NEWSPAPER LIBEL AND REGISTRATION ACT, 1881.

An Act to amend the Law of Newspaper Libel, and to provide for the Registration of Newspaper Proprietors.

[27th August, 1881.]

WHEREAS it is expedient to amend the law affecting civil actions and criminal prosecutions for newspaper libel:

And whereas it is also expedient to provide for the registration of newspaper proprietors:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words and phrases hereinafter mentioned shall have and include the meanings following; (that is to say,) Interpretation.

The word "registrar" shall mean in England the registrar for the time being of joint stock companies, or such person as the Board of Trade may for the time being authorize in that behalf, and in Ireland the assistant registrar for the time being of joint stock companies for Ireland, or such person as the Board of Trade may for the time being authorize in that behalf.

The phrase "registry office" shall mean the principal office for the time being of the registrar in England or Ireland, as the case may be, or such other office as the Board of Trade may from time to time appoint.

The word "newspaper" shall mean any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers.

Also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.

The word "occupation" when applied to any person shall mean his trade or following, and if none, then his rank or usual title, as esquire, gentleman.

The phrase "place of residence" shall include the street, square, or place where the person to whom it refers shall reside, and the number (if any) or other designation of the house in which he shall so reside.

The word "proprietor" shall mean and include as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

Newspaper reports of certain meetings privileged.

2. Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit; provided always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor.

[Repealed by sect. 2 of Law of Libel Amendment Act, 1888.]

No prosecution for newspaper libel without fiat of Attorney General.

3. No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein, without the written fiat or allowance of the Director of Public Prosecutions in England or Her Majesty's Attorney General in Ireland being first had and obtained.

[Repealed by sect. 8 of Law of Libel Amendment Act, 1888.]

Inquiry by Court of summary jurisdiction as to libel being for public benefit or being true.

4. A Court of summary jurisdiction, upon the hearing of a charge against a proprietor, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the Court, if of opinion after hearing such evidence

that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

5. If a Court of summary jurisdiction upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein is of opinion that though the person charged is shown to have been guilty the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the Court shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?" and, if such person assents to the case being dealt with summarily the Court may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

Provision as to summary conviction for libel.

Section twenty-seven of the Summary Jurisdiction Act, 1879, shall, so far as is consistent with the tenor thereof, apply to every such proceeding as if it were herein enacted and extended to Ireland, and as if the Summary Jurisdiction Acts were therein referred to instead of the Summary Jurisdiction Act, 1848.

42 & 43
Vict. c. 49.

6. Every libel or alleged libel, and every offence under this Act, shall be deemed to be an offence within and subject to the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanors."

11 & 12
Vict. c. 43.

7. Where, in the opinion of the Board of Trade, inconvenience would arise or be caused in any case from the registry of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances), it shall be lawful for the Board of Trade to authorize the registration of such newspaper in the name or names of some one or more responsible "representative proprietors."

22 & 23
Vict. c. 17
made applicable to this Act.

8. A register of the proprietors of newspapers as defined by this Act shall be established under the superintendence of the registrar.

Board of Trade may authorize registration of the names of only a portion of the proprietors of a newspaper.

9. It shall be the duty of the printers and publishers for the time being of every newspaper to make or cause to be made to the Registry Office on or before the thirty-first of July one thousand eight hundred and eighty-one, and thereafter annually in the month of July in every year, a return of the following particulars according to the Schedule A. hereunto annexed; that is to say,

Register of newspaper proprietors to be established. Annual returns to be made.

(a.) The title of a newspaper :

(b.) The names of all the proprietors of such newspaper together with their respective occupations, places of business (if any), and places of residence.

Penalty for omission to make annual returns. 10. If within the further period of one month after the time hereinbefore appointed for the making of any return as to any newspaper such return be not made, then each printer and publisher of such newspaper shall, on conviction thereof, be liable to a penalty not exceeding twenty-five pounds, and also to be directed by a summary order to make a return within a specified time.

Power to party to make return. 11. Any party to a transfer or transmission of or dealing with any share of or interest in any newspaper whereby any person ceases to be a proprietor, or any new proprietor is introduced, may at any time make or cause to be made to the Registry Office a return according to the Schedule B. hereunto annexed and containing the particulars therein set forth.

Penalty for wilful misrepresentation in or omission from return. 12. If any person shall knowingly and wilfully make or cause to be made any return by this Act required or permitted to be made in which shall be inserted or set forth the name of any person as a proprietor of a newspaper who shall not be a proprietor thereof, or in which there shall be any misrepresentation, or from which there shall be any omission in respect of any of the particulars by this Act required to be contained therein whereby such return shall be misleading, or if any proprietor of a newspaper shall knowingly and wilfully permit any such return to be made which shall be misleading as to any of the particulars with reference to his own name, occupation, place of business (if any), or place of residence, then and in every such case, every such offender being convicted thereof shall be liable to a penalty not exceeding one hundred pounds.

Registrar to enter returns in register. 13. It shall be the duty of the registrar and he is hereby required forthwith to register every return made in conformity with the provisions of this Act in a book to be kept for that purpose at the Registry Office and called "the register of newspaper proprietors," and all persons shall be at liberty to search and inspect the said book from time to time during the hours of business at the Registry Office, and any person may require a copy of any entry in or an extract from the book to be certified by the registrar or his deputy for the time being or under the official seal of the registrar.

Fees payable for registrar's services. 14. There shall be paid in respect of the receipt and entry of returns made in conformity with the provisions of this Act, and for the inspection of the register of newspaper proprietors, and for certified copies of an entry therein, and in respect

of any other services to be performed by the registrar, such fees (if any) as the Board of Trade with the approval of the Treasury may direct and as they shall deem requisite to defray as well the additional expenses of the Registry Office caused by the provisions of this Act, as also the further remunerations and salaries (if any) of the registrar, and of any other persons employed under him in the execution of this Act, and such fees shall be dealt with as the Treasury may direct.

15. Every copy of an entry in or extract from the register of newspaper proprietors purporting to be certified by the registrar or his deputy for the time being, or under the official seal of the registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors, so far as the same appear in such copy or extract without proof of the signature thereto or of the seal of office affixed thereto, and every such certified copy or extract shall in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all the matters and things thereby appearing, unless and until the contrary thereof be shown.

Copies of entries in and extracts from register to be evidence.

16. All penalties under this Act may be recovered before a Court of Summary Jurisdiction in manner provided by the Summary Jurisdiction Acts.

Recovery of penalties and enforcement of orders.

Summary orders under this Act may be made by a Court of Summary Jurisdiction, and enforced in manner provided by section thirty-four of the Summary Jurisdiction Act, 1879; and, for the purposes of this Act, that section shall be deemed to apply to Ireland in the same manner as if it were re-enacted in this Act.

17. The expression "a Court of Summary Jurisdiction" has in England the meanings assigned to it by the Summary Jurisdiction Act, 1879: and in Ireland means any justice or justices of the peace, stipendiary or other magistrate or magistrates, having jurisdiction under the Summary Jurisdiction Acts.

Definitions.

The expression "Summary Jurisdiction Acts" has, as regards England, the meanings assigned to it by the Summary Jurisdiction Act, 1879; and as regards Ireland, means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace for such district, or of the police of that district, and elsewhere in Ireland the Petty sessions (Ireland) Act, 1851, and any Act amending the same.

14 & 15 Vict. c. 93.

18. The provisions as to the registration of newspaper proprietors contained in this Act, shall not apply to the case of any newspaper which belongs to a joint-stock company duly incorporated under and subject to the provisions of the Companies Acts, 1862 to 1879.

Joint-stock companies.

19. This Act shall not extend to Scotland.

20. This Act may for all purposes be cited as the Newspaper Libel and Registration Act, 1881.

The SCHEDULES to which this Act refers.

SCHEDULE A.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of the Newspaper.	Names of the Proprietors.	Occupations of the Proprietors.	Places of business (if any) of the Proprietors.	Places of Residence of the Proprietors.

SCHEDULE B.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of Newspaper.	Names of Persons who cease to be Proprietors.	Names of Persons who become Proprietors.	Occupation of new Proprietors.	Places of business (if any) of new Proprietors.	Places of Residence of new Proprietors.

51 & 52 VICT. c. 64.

(LAW OF LIBEL AMENDMENT ACT, 1888.)

An Act to amend the Law of Libel. [24th December, 1888.]

WHEREAS it is expedient to amend the law of libel :

Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In the construction of this Act the word "newspaper" shall have the same meaning as in the Newspaper Libel and Registration Act, 1881. Interpretation.

2. Section two of the Newspaper Libel and Registration Act, 1881, is hereby repealed. Repeal of 44 & 45 Vict. c. 60, s. 2.

3. A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter. Newspaper reports of proceedings in court privileged.

4. A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act of Parliament, warrant under the Royal Sign Manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of state, commissioner of police, or chief constable of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter: Provided, also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared Newspaper reports of proceedings of public meetings and of certain bodies and persons privileged.

a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same: Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern, and the publication of which is not for the public benefit.

For the purposes of this section "public meeting" shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

Consolidation of actions.

5. It shall be competent for a judge or the Court, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

In a consolidated action under this section the jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

Power to defendant to give certain evidence in mitigation of damages.

6. At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Obscene matter need not be set forth in indictment

7. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passages, but it shall be sufficient to deposit the book, newspaper, or other documents containing

the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely, by reference to pages, columns, and lines, in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding.

8. Section three of the forty-fourth and forty-fifth Victoria, chapter sixty, is hereby repealed, and instead thereof be it enacted that no criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a Judge at Chambers being first had and obtained.

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

9. Every person charged with the offence of libel before any Court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent, but not compellable, witnesses on every hearing at every stage of such charge.

10. This Act shall not apply to Scotland.

11. This Act may be cited as the Law of Libel Amendment Act, 1888.

or other
judicial
proceeding.

Repeal of
44 & 45
Vict. c. 60,
s. 3.
Order of
Judge re-
quired for
prosecu-
tion of
newspaper
proprietor,
&c.

Person
proceeded
against
criminally
a com-
petent
witness.

INDIAN AND COLONIAL LAW.

INDIAN PENAL CODE. CHAP. XXI. (*Of Defamation*).

499. Whoever, by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing, or having reason to believe, that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. It may amount to defamation to make an imputation concerning a company, or an association, or collection of persons as such.

Explanation 3. An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4. No imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions or respecting his character, so far as his character appears in that conduct, and no farther.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct, and no farther.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of such proceedings.

Explanation.—A Justice of the Peace, or other officer, holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance, and no farther.

Explanation.—A performance may be submitted to the judgment of the public expressly, or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of the accusation.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.—It is not defamation to convey a caution in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Whoever sells, or offers for sale, any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

AN ACT TO DECLARE AND AMEND THE LAW RELATING TO
DEFAMATION (QUEENSLAND, 1889).

3. In this Act the term "Periodical" includes any newspaper, review, magazine, or other writing or print, published periodically.

Defamation.

4. Any imputation concerning any person, or any member of his family, whether living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession or trade, or by which other

persons are likely to be induced to shun or avoid or ridicule or despise him, is called defamatory, and the matter of the imputation is called defamatory matter.

The imputation may be expressed either directly, or by insinuation or irony.

5. The question whether any matter is or is not defamatory is a question of fact.

The question whether any matter alleged to be defamatory is or is not capable of bearing a defamatory meaning is a question of law.

6. Any person who, by words either spoken or intended to be read, or by signs or visible representations, publishes any defamatory imputation concerning any person, is said to defame that person.

7. Publication is, in the case of words spoken, the speaking of such words in the presence and hearing of any other person than the person defamed, and, in the case of other defamatory matter, the exhibiting of it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen, by any other person than the person defamed.

8. It is unlawful to publish defamatory matter, unless such publication is protected, or justified, or excused by law.

9. The unlawful publication of defamatory matter is an actionable wrong.

Absolute Protection.

10. (1.) A member of either House of Parliament does not incur any liability as for defamation by the publication of any defamatory matter in the course of a speech made by him in Parliament.

(2.) A person who presents a petition to either House of Parliament does not incur any liability as for defamation by the publication to that House of Parliament of any defamatory matter contained in the petition.

(3.) No person incurs any liability as for defamation by publishing, by order or under the authority of either House of Parliament, any paper containing defamatory matter.

11. No person incurs any liability as for defamation by publishing, in the course of any proceeding held before or under the authority of any Court of Justice, or in the course of any Inquiry made under the authority of any Statute, or under the authority of Her Majesty, or of the Governor in Council, or of either House of Parliament, any defamatory matter.

12. A person appointed under the authority of any Statute or by or under the authority of Her Majesty, or the Governor

in Council, to hold any Inquiry, does not incur any liability as for defamation by publishing any defamatory matter in any Official Report made by him of the result of such Inquiry.

Reports of Matters of Public Interest.

13. It is lawful—

- (1.) To publish in good faith for the information of the public a fair report of the proceedings of either House of Parliament, or of any Committee thereof;
- (2.) To publish in good faith for the information of the public a copy of, or an extract from or abstract of, any paper published by order or under the authority of either House of Parliament;
- (3.) To publish in good faith for the information of the public a fair report of the public proceedings of any Court of Justice, whether such proceedings are preliminary, or interlocutory, or final, or of the result of any such proceedings, unless in the case of proceedings which are not final the publication has been prohibited by the Court, or unless the matter published is blasphemous or obscene;
- (4.) To publish in good faith for the information of the public a fair report of the proceedings of any Inquiry, held under the authority of any Statute, or under the authority of Her Majesty, or of the Governor in Council, or an extract from or an abstract of any such proceedings, or a copy of, or an extract from or abstract of, any official Report made by the person by whom the Inquiry was held;
- (5.) To publish in good faith for the information of the public, at the request of any Government Office or Department, officer of State, or officer of Police, any notice or Report issued by such Office, Department, or Officer, for the information of the public;
- (6.) To publish in good faith for the information of the public a fair report of the proceedings of any Local Authority, Board, or Body of Trustees, or other persons duly constituted under the provisions of any Statute for the discharge of public functions, so far as the matter published relates to matters of public concern;
- (7.) To publish in good faith for the information of the public a fair report of the proceedings of any public meeting, so far as the matter published relates to matters of public concern. The term "Public Meeting" means a meeting lawfully held for a lawful

purpose, and for the *bonâ fide* furtherance or discussion of a matter of public concern or for the advocacy of the candidature of any person for a public office, whether the admission to the meeting was open or restricted.

A publication is said to be made in good faith for the information of the public if the person by whom it is made is not actuated in making it by ill-will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of the publication of news.

In the case of a publication of a report of the proceedings of a public meeting in a periodical, it is evidence of a want of good faith if the proprietor, publisher, or editor has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish the same.

Fair Comment.

14. It is lawful—

- (1.) To publish a fair comment respecting any of the matters with respect to which the publication of a fair report in good faith for the information of the public is by the last preceding section declared to be lawful ;
- (2.) To publish a fair comment respecting the public conduct of any person who takes part in public affairs, or respecting the character of any such person, so far as his character appears in that conduct ;
- (3.) To publish a fair comment respecting the conduct of any public officer or public servant in the discharge of his public functions, or respecting the character of any such person, so far as his character appears in that conduct ;
- (4.) To publish a fair comment respecting the merits of any case, civil or criminal, that has been decided by any Court of Justice, or respecting the conduct of any person as a judge, party, witness, counsel, solicitor, or officer of the Court, in any such case, or respecting the character of any such person, so far as his character appears in that conduct ;
- (5.) To publish a fair comment respecting any published book or other literary production, or respecting the character of the author, so far as his character appears by such book or production ;
- (6.) To publish a fair comment respecting any composition

or work of art or performance publicly exhibited, or respecting the character of the author or performer or exhibitor, so far as his character appears from the matter exhibited ;

(7.) To publish a fair comment respecting any public entertainment or sports, or respecting the character of any person conducting or taking part therein, so far as his character appears from the matter of the entertainment or sports, or the manner of conducting the same ;

(8.) To publish a fair comment respecting any communication made to the public on any subject.

15. Whether a comment is or is not fair is a question of fact. If it is not fair, and is defamatory, the publication of it is unlawful.

Truth.

16. It is lawful to publish defamatory matter if the matter is true, and if it is for the public benefit that the publication complained of should be made.

Qualified Protection—Excuse.

17. It is a lawful excuse for the publication of defamatory matter—

(1.) If the publication is made in good faith by a person having over another any lawful authority in the course of a censure passed by him on the conduct of that other in matters to which such lawful authority relates ;

(2.) If the publication is made in good faith, for the purpose of seeking remedy or redress for some private or public wrong, or grievance from a person who has, or is reasonably believed by the person making the publication to have, authority over the person defamed with respect to the subject-matter of such wrong or grievance ;

(3.) If the publication is made in good faith for the protection of the interests of the person making the publication, or of some other person, or for the public good ;

(4.) If the publication is made in good faith in answer to an inquiry made of the person making the publication relating to some subject as to which the person by whom, or on whose behalf the inquiry is made has, or is reasonably believed by the person making the publication to have, an interest in proving the truth ;

- (5.) If the publication is made in good faith for the purpose of giving information to the person to whom it is made with respect to some subject as to which that person has, or is reasonably believed by the person making the publication to have, such an interest in knowing the truth as to make his conduct in making the publication reasonable under the circumstances ;
- (6.) If the publication is made in good faith on the invitation or challenge of the person defamed ;
- (7.) If the publication is made in good faith in order to answer or refute some other defamatory matter published by the person defamed concerning the person making the publication, or some other person ;
- (8.) If the publication is made in good faith in the course of, or for the purposes of, the discussion of some subject of public interest the public discussion of which is for the public benefit.

For the purposes of this section, a publication is said to be made in good faith if the matter published is relevant to the matters the existence of which may excuse the publication in good faith of defamatory matter ; if the manner and extent of the publication does not exceed what is reasonably sufficient for the occasion ; and if the person by whom it is made is not actuated by ill-will to the person defamed, or by any other improper motive, and does not believe the defamatory matter to be untrue.

Good Faith.

18. When any question arises whether a publication of defamatory matter was or was not made in good faith, and it appears that the publication was made under circumstances which would afford lawful excuse for the publication if it was made in good faith, the burden of proof of the absence of good faith lies upon the party alleging such absence.

19. Whether any defamatory matter is or is not relevant to any other matter, and whether the public discussion of any subject is or is not for the public benefit, are questions of fact.

Oral Defamation.

any case other than that of words intended to be a good defence to an action or prosecution for to prove that the publication was made on an and under circumstances when the person defamed likely to be injured thereby.

Provisions in respect of Actions for Defamation.

21. In an action for defamation the defendant may plead and prove in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, as soon afterwards as he had an opportunity to do so.

22. In an action for the publication of defamatory matter in a periodical, the defendant may plead that such matter was published without actual ill-will to the person defamed, or other improper motive, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such periodical a full apology for such defamation, or, if the periodical in which the defamatory matter appeared was ordinarily published at intervals exceeding one week, offered to publish the apology in any periodical to be selected by the plaintiff.

The defendant must, upon pleading such defence, pay into Court a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, and such payment into Court shall be of the same effect in all respects as in other cases of payment into Court.

23. The Court, or a Judge, upon the application by or on behalf of two or more defendants in actions in respect of the publication of the same, or substantially the same, defamatory matter brought by one and the same person, may make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the actions, the defendant in any new action instituted in respect of the publication of the same, or substantially the same, defamatory matter shall also be entitled to be joined in a common action upon a joint application being made by such new defendant, and the defendants in the actions already consolidated.

In an action consolidated under this section the judge or jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately; and if a verdict is given against the defendants in more than one of the actions so consolidated the judge or jury shall proceed to apportion the amount of damages so found between and against the last-mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such

order as he deems just for the apportionment of such costs between and against such defendants.

24. At the trial of an action for the publication of defamatory matter in a periodical the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered, or has brought actions for, damages, or has received or agreed to receive compensation, in respect of other publications of defamatory matter to the same purport or effect as the matter for the publication of which the action is brought.

Criminal Liability.

25. Any person who unlawfully publishes any defamatory matter knowing it to be false is guilty of a misdemeanor, and is liable, upon conviction, to be imprisoned for any term not exceeding two years, with or without hard labour, and to be fined in any sum not exceeding five hundred pounds.

26. Any person, not being a member of either House of Parliament, who unlawfully publishes any false or scandalous defamatory matter touching the conduct of any member or members of either House of Parliament as such member or members, is guilty of a misdemeanor, and is liable upon conviction to be imprisoned for any term not exceeding two years, with or without hard labour, and to be fined in any sum not exceeding five hundred pounds.

27. Any person who unlawfully publishes any defamatory matter is guilty of a misdemeanor, and is liable, upon conviction, to be imprisoned for any period not exceeding twelve months, and to be fined in any sum not exceeding three hundred pounds.

28. If upon the hearing of a charge of publication of defamatory matter the justices are of opinion that a *prima facie* case has been made out against the defendant, they may ask the defendant the following question:—"Do you claim to be tried by a jury, or do you consent to the case being dealt with summarily?" And if the defendant consents to the case being dealt with summarily, the justices may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

29. Any person charged before a Court of criminal jurisdiction with the unlawful publication of defamatory matter who sets up as a defence that the defamatory matter is true, and that it was for the public benefit that the publication complained of should be made, must plead that matter specially, either with or without the general plea of "Not guilty."

30. Any person charged before a Court of criminal jurisdiction with the unlawful publication of defamatory matter,

and the husband or wife of the person so charged, shall be competent but not compellable witnesses at any stage of the charge.

31. Upon the trial of any person for the unlawful publication of defamatory matter, the jury may give a general verdict of guilty or not guilty upon the whole matter put in issue, in like manner as in other criminal cases.

32. Any person who publishes, or threatens to publish, any defamatory matter concerning any other person, or directly or indirectly threatens to publish, or directly or indirectly proposes to abstain from publishing, or directly or indirectly offers to prevent the publishing of any defamatory matter concerning any other person, with intent to extort any money, or security for money, or any valuable thing, from such person, or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, is guilty of a misdemeanor, and is liable, upon conviction, to be imprisoned for any term not exceeding three years, with or without hard labour.

Nothing herein contained shall alter or affect any law now in force in respect to the sending or delivery of threatening letters or writings.

*Provisions with respect to Publishers and Sellers of Periodicals,
and Sellers of Books.*

33. A proprietor, publisher, or editor of a periodical is not criminally responsible for defamatory matter published therein, if he shows that the matter complained of was inserted without his knowledge and without negligence on his part.

General authority given to the person who actually inserted the defamatory matter to manage or conduct the periodical as editor or otherwise, and to insert therein what in his discretion he thinks fit, is not negligence within the meaning of this section, unless it is proved that the proprietor or publisher, or editor, when giving such general authority, meant that it should extend to and authorise the unlawful publication of defamatory matter, or continued such general authority, knowing that it had been exercised by unlawfully publishing defamatory matter in any number or part of the periodical.

34. No person incurs any liability as for defamation by selling any number or part of a periodical unless he knows that such number or part contains defamatory matter, or that defamatory matter is habitually or frequently contained in that periodical.

35. No person incurs any liability as for defamation by selling a book, pamphlet, print, or writing, or other thing, not

forming part of a periodical, although it contains defamatory matter, if, at the time of the sale, he does not know that the defamatory matter is contained therein.

36. The sale by a servant of a book, pamphlet, print, or writing, or other thing, whether a periodical or not, does not make his employer responsible in respect of defamatory matter contained therein, unless it is proved that such employer authorised the sale knowing that the book, pamphlet, print, writing, or other thing contained defamatory matter; or, in the case of a number or part of a periodical, that defamatory matter was habitually or frequently published therein.

37. No criminal prosecution shall be instituted against the proprietor, or publisher, or editor, or any person responsible for the publication, of any periodical, for any defamatory matter published therein, without the order of a judge of the Supreme Court, made after notice to the person accused, and after that person has had an opportunity of being heard in opposition to the application for the order.

Evidence.

38. Upon the trial of an action for unlawfully publishing defamatory matter contained in a book or periodical, the production of the book, or of a number or part of the periodical, containing a printed statement that it is printed or published by or for the defendant, shall be *prima facie* evidence of the publication of the book, or of the number or part of the periodical, by the defendant.

39. Upon the trial of an action or prosecution for unlawfully publishing defamatory matter contained in a periodical, after evidence sufficient in the opinion of the Court has been given of the publication by the defendant of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical formerly or subsequently published, and containing a printed statement that they were published by or for the defendant, shall be admissible in evidence on either side, without further proof of publication of them.

Staying Proceedings.

40. The defendant in any action or prosecution commenced or prosecuted in respect of the publication of any paper published by the defendant, or by his servant, by order or under the authority of either House of Parliament, may bring before the Court in which the proceeding is pending, or before any

judge thereof, first giving twenty-four hours' notice of his intention so to do, to the plaintiff or prosecutor, a certificate under the hand of the president or clerk of the Legislative Council, or speaker or clerk of the Legislative Assembly, as the case may be, stating that the paper in respect whereof such action or prosecution is commenced or prosecuted was published by the defendant, or by his servant, by order or under the authority of the Council or Assembly, together with an affidavit verifying such certificate, and such Court or judge shall thereupon immediately stay such action or prosecution, and may order the plaintiff or prosecutor to pay the defendant his costs of defence.

41. In any action or prosecution commenced or prosecuted in respect of the publication of a copy of, or an extract from or abstract of, any such paper, the defendant may, at any stage of the proceedings, lay before the Court or a judge thereof an original of such paper, with an affidavit verifying the same; and the Court or judge may thereupon stay such action or prosecution, and may order the plaintiff or prosecutor to pay the defendant his costs of defence.

Remedy for Costs and Damages.

42. (1.) In the case of a prosecution of any person on the complaint of a private prosecutor for the publication of defamatory matter, if the defendant is acquitted he shall be entitled to recover from the prosecutor the costs sustained by him by reason of such prosecution.

(2.) In the case of a prosecution of any person on the complaint of a private prosecutor for the publication of defamatory matter, if the defendant pleads the truth of the matter published and that the publication was for the public benefit, then, if the issue is found for the Crown, the prosecutor shall be entitled to recover from the defendant the costs sustained by him by reason of such plea.

(3.) Such costs so to be recovered by the defendant or prosecutor respectively, shall be taxed by the proper officer of the Court before which the information is tried.

43. Whenever any person is convicted, either in an action or prosecution, of publishing any defamatory matter by means of printing, the plaintiff or prosecutor in whose favour judgment is given, may, under his writ of execution, levy the damages, penalty, and costs, out of any property of the defendant in like manner as in ordinary civil actions, and also out of the whole of the types, presses, or printing materials belonging to the person whose types, presses, or printing materials,

or any part thereof, were used in printing such defamatory matter, to whomsoever the same may belong at the time of the levy.

Operation of the Act.

44. The rules of law declared and enacted by this Act shall be applied in all actions and prosecutions for defamation begun after the passing of this Act.

45. Nothing in this Act shall be construed to limit or abridge any protection or privilege now by law existing.

46. Nothing in this Act relates to the actionable wrong commonly called "Slander of Title," or to the misdemeanour of publishing a Blasphemous or Seditious or Obscene Libel.

CANADIAN CRIMINAL CODE, 1892. PART XXIII.

Defamatory Libel.

285. A defamatory libel is matter published, without legal justification or excuse, likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or designed to insult the person to whom it is published.

2. Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony.

286. Publishing a libel is exhibiting it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen by the person defamed or by any other person.

287. No one commits an offence by publishing defamatory matter on the invitation or challenge of the person defamed thereby, nor if it is necessary to publish such defamatory matter in order to refute some other defamatory statement published by that person concerning the alleged offender, if such defamatory matter is believed to be true, and is relevant to the invitation, challenge, or the required refutation, and the publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

288. No one commits an offence by publishing any defamatory matter, in any proceeding held before or under the authority of any Court exercising judicial authority, or in any inquiry made under the authority of any statute or by order of Her Majesty, or of any of the departments of Government, Dominion or provincial.

289. No one commits an offence by publishing to either the Senate, or House of Commons, or to any Legislative Council, Legislative Assembly or House of Assembly, defamatory matter contained in a petition to the Senate, or House of Commons, or to any such Council or Assembly, or by publishing by order or under the authority of the Senate or House of Commons, or of any such Council or Assembly, any paper containing defamatory matter, or by publishing, in good faith and without ill-will to the person defamed, any extract from or abstract of any such paper.

290. No one commits an offence by publishing in good faith, for the information of the public, a fair report of the proceedings of the Senate or House of Commons, or any committee thereof, or of any such Council or Assembly, or any committee thereof, or of the public proceedings, preliminary or final, heard before any Court exercising judicial authority, nor by publishing, in good faith, any fair comment upon any such proceedings.

291. No one commits an offence by publishing in good faith, in a newspaper, a fair report of the proceedings of any public meeting if the meeting is lawfully convened for a lawful purpose and open to the public, and if such report is fair and accurate, and if the publication of the matter complained of is for the public benefit, and if the defendant does not refuse to insert in a conspicuous place in the newspaper in which the report appeared a reasonable letter or document of explanation or contradiction by or on behalf of the prosecutor.

292. No one commits an offence by publishing any defamatory matter which he, on reasonable grounds, believes to be true, and which is relevant to any subject of public interest, the public discussion of which is for the public benefit.

293. No one commits an offence by publishing fair comment upon the public conduct of a person who takes part in public affairs.

2. No one commits an offence by publishing fair comment on any published book or other literary production, or any composition or work of art or performance publicly exhibited, or any other communication made to the public on any subject, if such comments are confined to criticism on such book or literary production, composition, work of art, performance or communication.

294. No one commits an offence by publishing defamatory matter for the purpose, in good faith, of seeking remedy or redress for any private or public wrong or grievance from a person who has, or is reasonably believed by the person publishing to have, the right or to be under obligation to remedy or redress such wrong or grievance, if the defamatory matter is

believed by him to be true, and is relevant to the remedy or redress sought, and such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

295. No one commits an offence by publishing, in answer to inquiries made of him, defamatory matter relating to some subject as to which the person by whom, or on whose behalf, the inquiry is made has, or on reasonable grounds is believed by the person publishing to have, an interest in knowing the truth, if such matter is published for the purpose, in good faith, of giving information in respect thereof to that person, and if such defamatory matter is believed to be true, and is relevant to the inquiries made, and also if such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

296. No one commits an offence by publishing to another person defamatory matter for the purpose of giving information to that person with respect to some subject as to which he has or is, on reasonable grounds, believed to have such an interest in knowing the truth as to make the conduct of the person giving the information reasonable under the circumstances: Provided that such defamatory matter is relevant to such subject, and that it is either true, or is made without ill-will to the person defamed, and in the belief, on reasonable grounds, that it is true.

297. Every proprietor of any newspaper is presumed to be criminally responsible for defamatory matter inserted and published therein, but such presumption may be rebutted by proof that the particular defamatory matter was inserted in such newspaper without such proprietor's cognizance, and without negligence on his part.

2. General authority given to the person actually inserting such defamatory matter to manage or conduct, as editor or otherwise, such newspaper, and to insert therein what he in his discretion thinks fit, shall not be negligence within this section unless it be proved that the proprietor, when originally giving such general authority, meant that it should extend to inserting and publishing defamatory matter, or continued such general authority knowing that it had been exercised by inserting defamatory matter in any number or part of such newspaper.

3. No one is guilty of an offence by selling any number or part of such newspaper, unless he knew either that such number or part contained defamatory matter, or that defamatory matter was habitually contained in such newspaper.

298. No one commits an offence by selling any book, magazine, pamphlet, or other thing, whether forming part of any periodical or not, although the same contains defamatory matter, if, at the time of such sale, he did not know that such

defamatory matter was contained in such book, magazine, pamphlet, or other thing.

2. The sale by a servant of any book, magazine, pamphlet, or other thing, whether periodical or not, shall not make his employer criminally responsible in respect of defamatory matter contained therein unless it be proved that such employer authorized such sale knowing that such book, magazine, pamphlet, or other thing contained defamatory matter, or, in case of a number or part of a periodical, that defamatory matter was habitually contained in such periodical.

299. It shall be a defence to an indictment or information for a defamatory libel that the publishing of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published, and that the matter itself was true.

300. Every one is guilty of an indictable offence and liable to two years' imprisonment, or to a fine not exceeding 600 dollars, or to both, who publishes or threatens to publish, or offers to abstain from publishing, or offers to prevent the publishing of, a defamatory libel with intent to extort any money, or to induce any person to confer upon or procure for any person any appointment or office of profit or trust, or in consequence of any person having been refused any such money, appointment or office.

301. Every one is guilty of an indictable offence and liable to two years' imprisonment, or to a fine not exceeding 400 dollars, or to both, who publishes any defamatory libel knowing the same to be false.

302. Every one is guilty of an indictable offence and liable to one year's imprisonment, or to a fine not exceeding 200 dollars, or to both, who publishes any defamatory libel.

OFFICIAL SECRETS ACT.

52 & 53 VICT. c. 52, ss. 1-3.

[1889.]

1. (1.) (a) Where a person for the purpose of wrongfully obtaining information—
 - (i.) enters or is in any part of a place belonging to Her Majesty the Queen, being a fortress, arsenal, factory, dockyard, camp, ship, office, or other like place, in which part he is not entitled to be; or
 - (ii.) when lawfully or unlawfully in any such place as aforesaid, either obtains any document, sketch, plan, model, or knowledge of anything which he

- is not entitled to obtain, or takes without lawful authority any sketch or plan; or
- (iii.) when outside any fortress, arsenal, factory, dockyard, or camp belonging to Her Majesty the Queen, takes or attempts to take without authority given by or on behalf of Her Majesty, any sketch, or plan, of that fortress, arsenal, factory, dockyard, or camp; or
- (b) where a person, knowingly having possession of, or control over, any such document, sketch, plan, model, or knowledge, as has been obtained or taken by means of any act which constitutes an offence against this Act, at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interest of the State, to be communicated at that time; or
- (c) where a person after having been entrusted in confidence by some officer under Her Majesty the Queen with any document, sketch, plan, model, or information relating to any such place as aforesaid, or to the naval or military affairs of Her Majesty, wilfully and in breach of such confidence communicates the same when, in the interest of the State, it ought not to be communicated; he shall be guilty of a misdemeanour, and on conviction be liable to imprisonment with or without hard labour, for a term not exceeding one year, or to a fine, or to both imprisonment and a fine.
- (2.) Where a person having possession of any document, sketch, plan, model, or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to Her Majesty, or to the naval or military affairs of Her Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interest of the State, to be communicated at that time, he shall be guilty of a misdemeanour, and be liable to the same punishment as if he had committed an offence under the foregoing provisions of this section.
- (3.) Where a person commits any act declared by this section to be a misdemeanour, he shall, if he intended to communicate to a foreign State any information, document, sketch, plan, model, or knowledge obtained or taken by him or entrusted to him as aforesaid, or if he communicates the same to any agent of a foreign State, be guilty of felony, and on conviction be liable at the discretion of the Court to penal servitude for life, or for any term

not less than five years, or to imprisonment for any term not exceeding two years with or without hard labour.

2. (1.) Where a person, by means of his holding or having held an office under Her Majesty the Queen, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan, or model, or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model, or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust.

(2.) A person guilty of a breach of official trust shall,

(a) if the communication was made or attempted to be made to a foreign State, be guilty of felony, and on conviction be liable at the discretion of the Court to penal servitude for life, or for any term not less than five years, or to imprisonment for any term not exceeding two years, with or without hard labour; and

(b) in any other case be guilty of a misdemeanour, and on conviction be liable to imprisonment, with or without hard labour, for a term not exceeding one year, or to a fine, or to both imprisonment and a fine.

(3.) This section shall apply to a person holding a contract with any department of the Government of the United Kingdom, or with the holder of any office under Her Majesty the Queen, as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract, who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were respectively holders of an office under Her Majesty the Queen.

3. Any person who invites or counsels, or attempts to procure, another person to commit an offence under this Act, shall be guilty of a misdemeanour, and on conviction be liable to the same punishment as if he had committed the offence.

POST OFFICE, STAMPS, ETC.

A. *Post Office.*

7 WILL. 4, and 1 VICT. c. 36, s. 5.

[1837.]

AND for the prevention of the abuse of the privilege of sending newspapers free by the post, or at a reduced rate, be it enacted, that every person who shall inclose, or cause or procure to be inclosed, in a newspaper to be sent by the post, or under the

Penalty on
abuse of
privilege
as to news-
papers.

cover thereof, any letter or paper or thing, and every person who shall print or cause to be printed any words or communication, either upon any such newspaper after the same shall have been published, or upon the cover thereof, or who shall put or cause to be put any writing or marks either upon the newspaper or upon the cover thereof, other than the name and address of the person to whom it shall be sent, and every person who shall knowingly either send or cause to be sent by the post, or who shall either deliver or tender, in order to be sent by the post, a newspaper in respect of which any one of the offences hereinbefore mentioned shall have been committed, shall for every such offence forfeit treble the duty of the postage computed by weight and by distance, as if the paper in respect of which the offence was committed were a letter, such postage to be recoverable as postages not exceeding in amount twenty pounds, are recoverable; or he shall, except in those cases in which the said newspaper or cover shall only have marks thereon and not writing, at the option of the Postmaster General, be prosecuted as for a misdemeanour, and shall suffer punishment accordingly.

3 & 4 VICT. c. 96, s. 43.

[1840.]

News-
papers
may be dis-
tributed
otherwise
than by
post.

AND be it enacted that, although newspapers may be sent by the post . . . it shall not be compulsory to send them by post.

31 & 32 VICT. c. 110 (THE TELEGRAPH ACT, 1868),
ss. 16 and 23.

Power to
Postmaster
General to
enter into
special
agreements
with pro-
prietors of
news-
papers.

16. Notwithstanding anything in the Act, it shall be lawful for the Postmaster General, with the Consent of the Commissioners of Her Majesty's Treasury, from time to time to make contracts, agreements and arrangements with the Proprietor or Publisher of any public registered Newspaper, or the Proprietor or Occupier of any News Room, Club, or Exchange Room, for the transmission and delivery, or the transmission or delivery of telegraphic communications at rates not exceeding one shilling for every hundred words transmitted between the hours of six p.m. and nine a.m., and at rates not exceeding one shilling for every seventy-five words transmitted between the hours of nine a.m. and six p.m. to a single address, with an additional charge of twopence for every

hundred words, or twopence for every seventy-five words, as the case may be, of the same telegraphic communication so transmitted to every additional address: Provided always, that the Postmaster General may, from time to time, with the like Consent, let to any such Proprietor, Publisher, or Occupier the special use of a wire (during such period of twelve hours *per diem* as may be agreed on) for the purposes of such Newspaper, News Room, Club or Exchange Room, at a rate not exceeding five hundred pounds *per annum*: Provided also, that no such Proprietor, Publisher, or Occupier shall have any undue priority or preference in respect of such rates over any other such Proprietor, Publisher, or Occupier.

23. Copies of all contracts, agreements, and arrangements from time to time made under the authority of this Act, shall be laid before both Houses of Parliament within fourteen days of the commencement of the Session next succeeding the making of every such contract, agreement, and arrangement; . . .

33 & 34 VICT. c. 79.

An Act for further regulation of Duties of Postage, and for other purposes relating to the Post Office. [9th August, 1870.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as The Post Office Act, 1870.

Short title.

2. In this Act—

Interpretation of terms.

“The Treasury” means the Commissioners of Her Majesty's Treasury or two of them:

“Treasury warrant” means a warrant under the hands of the Treasury:

“The Postmaster General” means Her Majesty's Postmaster General:

“Post Office regulations” means regulations made by the Postmaster General.

3. For the purposes of this Act, the Channel Islands and the Isle of Man shall be deemed parts of the United Kingdom.

Channel Islands and Isle of Man.

4. The enactments described in the first schedule to this Act shall, from and immediately after the thirtieth day of September, one thousand eight hundred and seventy, be repealed; but that repeal shall not affect the past operation

Repeal and limitation of enactments.

of any of those enactments, or the force or operation of any Treasury warrant or Post Office regulations made, or the validity or invalidity of anything done or suffered, or any right, title, obligation, or liability accrued, before that repeal takes effect; nor shall this Act interfere with the prosecution or institution of any proceeding in respect of any right, title, obligation, or liability accrued under, or any offence committed against, or any penalty or forfeiture incurred under, any of those enactments before that repeal takes effect; and section four of and schedule (A.) to the Act first described in the first schedule to this Act, or either of them, shall not be deemed to contain or affect the definition of a newspaper for the purposes of this Act or of any other enactment regulating the sending of newspapers by post.

Allowance
for news-
paper
stamps on
hand.

5. Where any person is possessed of any newspaper stamps made useless by this Act, the Commissioners of Inland Revenue, on application within six months after the thirtieth day of September, one thousand eight hundred and seventy, may cancel and make allowance for the same as in case of spoiled stamps.

Certain
publica-
tions to be
deemed
news-
papers.

6. Any publication coming within the following description shall for the purposes of this Act be deemed a newspaper, (that is to say,) any publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements; subject to these conditions—

That it be printed and published in the United Kingdom;

That it be published in numbers at intervals of not more than seven days;

That it be printed on a sheet or sheets unstitched;

That it have the full title and date of publication printed at the top of the first page, and the whole or part of the title and the date of publication printed at the top of every subsequent page.

[*The words in italics were repealed by 44 & 45 Vict. c. 19.*]

And the following shall, for the purposes of this Act, be deemed a supplement to a newspaper, (that is to say,) a publication consisting wholly or in great part of matter like that of a newspaper, or of advertisements, printed on a sheet or sheets or a piece or pieces of paper, *unstitched, or consisting wholly or in part of engravings, prints, or lithographs illustrative of articles in the newspaper*; such publication in every case being published with the newspaper, and having the title and date of publication of the newspaper printed at the top of every page, or at the top of every sheet or side on which any such engraving, print, or lithograph appears.

[The words in italics were repealed or modified by 54 & 55 Vict. c. 46.]

7. The proprietor or printer of any newspaper within the description aforesaid, and the proprietor or printer of any publication which, regard being had to the proportion of advertisements to other matter therein, is not within the description aforesaid, but which was stamped as a newspaper before the passing of the Act lastly mentioned in the first schedule to this Act, may register it at the General Post Office in London, at such time in each year and in such form and with such particulars as the Postmaster General from time to time directs, paying on each registration such fee not exceeding five shillings as the Postmaster General, with the approval of the Treasury, from time to time directs.

The Postmaster General may from time to time revise the register and remove therefrom any publication not being a newspaper.

The decision of the Postmaster General on the admission to or removal from the register of a publication shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.

Any publication for the time being on the register shall for the purposes of this Act be deemed a registered newspaper.

8. From and after the thirtieth day of September one thousand eight hundred and seventy, registered newspapers, book packets, pattern or sample packets, and post cards, may be sent by post between places in the United Kingdom, at the following rates of postage:—

On a registered newspaper, with or without a supplement or supplements One halfpenny.

On each registered newspaper in a packet of two or more, with or without a supplement or supplements One halfpenny.

On a book packet or pattern or sample packet:—

If not exceeding two ounces in weight One halfpenny.

If exceeding two ounces in weight, for the first two ounces and for every additional two ounces or fractional part of two ounces One halfpenny.

On a post card One halfpenny.

Provided that a packet of two or more registered newspapers with or without a supplement or supplements shall not be liable under this section to a higher rate of postage than the rate chargeable on a book packet of the same weight.

Registration of newspapers at Post Office.

Postage on newspapers, book and pattern or sample packets, and cards.

Post Office
regula-
tions.

9. The Postmaster General may from time to time, with the approval of the Treasury, make, in relation respectively to registered newspapers, book packets, pattern or sample packets, and post cards, sent by post, such regulations as he thinks fit, for all or any of the following purposes:—

For prescribing and regulating the times and modes of posting and delivery:

For prescribing prepayment and regulating the mode thereof:

For regulating the affixing of postage stamps:

For prescribing and regulating the payment again of postage in case of re-direction:

For regulating dimensions and maximum weight of packets:

For regulating the nature and form of covers:

For prohibiting or restricting the printing or writing of marks or communications or words:

For prohibiting inclosures;

and such other regulations as from time to time seem expedient for the better execution of this Act.

Saving
for parlia-
mentary
proceed-
ings.

10. Nothing in this Act or in any Treasury warrant or Post Office regulations shall repeal or alter any provision of sections 13, 16, or 17 of the Act secondly described in the first schedule to this Act as far as those sections relate to printed votes or proceedings of Parliament addressed to places in the United Kingdom.

News-
papers
under
convention.

11. A registered newspaper shall be deemed a newspaper for the purposes of any arrangement or convention between Her Majesty's Government and any colonial or foreign government for securing advantages for newspapers sent by post.

Colonial
and
foreign
postage
of news-
papers.

12. The Treasury may from time to time, by Treasury warrant, allow any newspapers, British, colonial, or foreign, to be sent by post between the United Kingdom and places out of the United Kingdom, or between places out of the United Kingdom, whether through the United Kingdom or not, at such rates of postage, not exceeding threepence for each newspaper irrespectively of any colonial or foreign postage, and on such conditions as they think fit, and according to Post Office regulations to be from time to time made in that behalf.

Any Treasury warrant and Post Office regulations made in that behalf before the passing of this Act are hereby confirmed; and the same shall continue in force unless and until altered by Treasury warrant or Post Office regulations (as the case may be).

Colonial
and
foreign

13. The Treasury from time to time, by Treasury warrant, may regulate the sending of book packets and pattern or sample packets by post, between the United Kingdom and

places out of the United Kingdom, or between places out of the United Kingdom, whether through the United Kingdom or not, and in relation thereto may prescribe rates of postage, weights, and other matters.

Any Treasury warrant and Post Office regulations made in that behalf before the passing of this Act are hereby confirmed; and the same shall continue in force unless and until altered by Treasury warrant or Post Office regulations (as the case may be).

14. If a question arises whether any publication, not being a registered newspaper, is a newspaper or a supplement, or whether any packet is a book packet or pattern or sample packet, within this Act or any Treasury warrant or Post Office regulations, the decision thereon of the Postmaster General shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.

15. If any registered or other newspaper, supplement, publication, book packet, pattern, or sample packet, or post card, is sent by post otherwise than in conformity with this Act or any Treasury warrant or Post Office regulations, it shall be either returned to the sender thereof or forwarded to its destination in either case charged with such rate of postage not exceeding the letter rate of postage, or without any additional charge, as the Postmaster General, with the approval of the Treasury, from time to time directs, having been, if necessary, detained and opened in the Post Office.

16. A book packet, pattern or sample packet, or post card sent by post shall be deemed a post letter, within the Act described in the second schedule to this Act.

17. Where the despatch or delivery from a post office of letters would be delayed by the despatch or delivery therefrom at the same time of book packets, pattern or sample packets, and post cards, or any of them, the same or any of them may, subject and according to Post Office regulations, be detained in the Post Office until the despatch or delivery next following that by which they would ordinarily be despatched or delivered.

18. The Commissioners of Inland Revenue shall from time to time provide proper dies and other implements for denoting by adhesive or embossed or impressed stamps or otherwise the duties of postage payable in the United Kingdom under this Act or any Treasury warrant thereunder.

Those duties shall be deemed stamp duties, and shall be under the management of the Commissioners of Inland Revenue.

So much of the Act secondly described in the first schedule

to this Act as relates to stamp duties under that Act shall apply to the stamp duties under this Act.

A newspaper or packet sent by post and the cover thereof (if any) shall be deemed a letter or cover (as the case may be) within section twenty-three of the Act secondly described in the first schedule to this Act; and a post card shall be deemed a letter within that section, and the duties under this Act shall be deemed to be comprised in the duties in that section referred to.

Prohibition of user of embossed or impressed stamps removed from paper, &c.

19. It shall not be lawful for any person to affix to a letter, newspaper, supplement, publication, packet or card sent by post or to the cover thereof (if any), by way of repayment of postage thereon, an embossed or impressed stamp cut out or otherwise separated from the cover or other paper, card, or thing on which such stamp was embossed or impressed, although such stamp has not been before sent by post or used.

If any letter, newspaper, supplement, publication, packet, or card is sent by post with a stamp affixed thereto or to the cover thereof (if any) that has been so cut out or separated, the postage thereof as far as it purports to be prepaid by that stamp shall be deemed to be not prepaid.

Prohibition of sending indecent articles, &c., by post.

20. The Postmaster General may from time to time with the approval of the Treasury make such regulations as he thinks fit for preventing the sending or delivery by post of indecent or obscene prints, paintings, photographs, lithographs, engravings, books, or cards, or of other indecent or obscene articles, or of letters, newspapers, supplements, publications, packets, or post cards, having thereon, or on the covers thereof, any words, marks, or designs of an indecent, obscene, libellous, or grossly offensive character.

Proof of Post Office regulations, &c.

21. The Documentary Evidence Act, 1868, shall have effect as if the Postmaster General were mentioned in the first column, and any Secretary or Assistant Secretary of the Post Office were mentioned in the second column, of the schedule to that Act; and any approval of the Treasury under this Act shall be deemed an order within that Act.

SCHEDULES.

THE FIRST SCHEDULE.

Enactments repealed.

- | | |
|-----------------------------------|--|
| 6 & 7 Will. 4,
c. 76, in part. | An Act to reduce the duties
on newspapers, and to
amend the laws relating
to the duties on news-
papers and advertisements
in part; namely,—
Sections one to three (both inclusive), and
sections thirty-four and thirty-five. |
| 3 & 4 Vict. c. 96,
in part. | An Act for the regulation of
the duties of postage } in part; namely,—
Section eleven; sections thirteen, sixteen, and
seventeen, as far as those three sections
relate to printed votes or proceedings of
Parliament, addressed to places out of the
United Kingdom, or to newspapers; sec-
tion forty-two; sections forty-four, forty-
five, and forty-six, as far as those three
sections relate to newspapers; and sections
forty-seven to fifty-one (both inclusive). |
| 11 & 12 Vict. c.
117. | An Act for rendering certain newspapers published
in the Channel Islands and the Isle of Man
liable to postage. |
| 16 & 17 Vict. c. 63,
in part. | An Act to repeal certain
stamp duties, and to grant
others in lieu thereof, to
give relief with respect to
the stamp duties on news-
papers and supplements } in part; namely,—
thereto, to repeal the duty
on advertisements, and
otherwise to amend the
laws relating to stamp
duties
Sections three and four. |
| 18 & 19 Vict. c. 27. | An Act to amend the laws relating to the stamp
duties on newspapers, and to provide for the
transmission by post of printed periodical
publications. |

THE SECOND SCHEDULE.

Act referred to.

7 Will. 4, and 1 Vict. c. 36.—An Act for consolidating the laws relative to offences against the Post Office of the United Kingdom, and for regulating the judicial administration of the Post Office laws, and for explaining certain terms and expressions employed in those laws.

38 VICT. c. 22, ss. 1 and 5.

An Act for the further regulation of the Duties on Postage, and for other purposes relating to the Post Office.

[14th June, 1875.]

Power of
Treasury
by warrant
to fix the
rates of
postage.

1. The Treasury may from time to time by warrant fix the rates of postage or other sums to be charged by or under the authority of the Postmaster General in respect of postal packets, or any description thereof, conveyed or delivered for conveyance by post, whether in the United Kingdom or elsewhere, or liable under the Acts mentioned in Part Two of the schedule to this Act to be charged with rates of postage or other sums, and regulate the scale of weights and the circumstances according to which such rates or sums are to be charged, and the power of the Postmaster General, with or without the consent of the Treasury, to remit any such rates or sums: Provided that—

- (1.) The lowest rate of postage for an inland letter shall not be less than one penny; and
- (2.) The highest rate of postage when prepaid—
 - (a.) For an inland post card shall not exceed one halfpenny; and
 - (b.) For an inland book packet shall not exceed one halfpenny for every two ounces in weight, or for any fractional part of two ounces over and above the first or any additional two ounces; and
 - (c.) For each inland registered newspaper, whether with or without a supplement or supplements, and whether single or in a packet of two or more, shall not exceed one halfpenny; but
 - (d.) The prepaid postage for an inland packet of two or more registered newspapers, with or without a supplement or supplements, shall

not exceed the prepaid postage for an inland book packet of the same weight ; and

- (3.) The highest rate of prepaid postage on a single newspaper sent by post between the United Kingdom and places out of the United Kingdom, or between places out of the United Kingdom, whether through the United Kingdom or not, shall not exceed three-pence, exclusive of any additional charge made by any of Her Majesty's colonies or any foreign country.

A warrant under this section may, subject to the limitations above contained, revoke and alter any existing rate of postage or other sums and any existing warrant and regulations made under any of the Acts mentioned in Part Two of the schedule to this Act, but so far as it does not revoke or alter the same any existing rate of postage or sum may continue to be charged, and any such existing warrant or regulations shall continue in force.

5. If any question arises whether any postal packet is a letter, post card, newspaper, supplement, book packet, circular, or other description of postal packet within the meaning of this Act, or any warrant made under this Act, the decision thereon of the Postmaster General shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.

Decision as to postal packets.

44 & 45 VICT. c. 19.

An Act for further regulating the transmission of Newspapers.

[18th July, 1881.]

1. For the purposes of this Act the Channel Islands and the Isle of Man shall be deemed parts of the United Kingdom.
2. From and after the thirtieth day of September, one thousand eight hundred and eighty-one, so much of section six of the Post Office Act, 1870, as requires that a publication in order to be a newspaper for the purposes of that Act, shall be printed on a sheet or sheets unstitched, shall be repealed, but such repeal shall not extend to a supplement to a newspaper.

For purposes of Act Channel Islands and Isle of Man part of United Kingdom. Repeal of part of sect. 6 of 33 & 34 Vict. c. 79.

54 & 55 VICT. c. 46 (POST OFFICE ACT, 1891).

1. A warrant of the Treasury under sect. 4 of the Post Office Act, 1875, made after the passing of this Act, may

determine . . . what marks or indications referring to the contents of a registered newspaper when written or printed on the newspaper or on the cover thereof, shall not be charged with rates of postage as letters.

2. (1.) A warrant of the Treasury under sect. 4 of the Post Office Act, 1875, may modify the provisions of sect. 6 of the Post Office Act, 1870, respecting the supplement of a newspaper so far as they apply to a supplement which consists wholly of engravings, prints, or lithographs illustrative of articles in the newspaper.

(2.) There shall be repealed so much of the said sect. 6 as requires the supplement to a newspaper to be unstitched, but all sheets of a supplement shall be put together at some one part of the registered newspaper, whether gummed or stitched up with the newspaper or not.

(3.) There shall further be repealed so much of the said sect. 6 as requires the supplement to a newspaper to have the date of publication of the newspaper printed at the top of every page, sheet, or side on which any engraving, print, or lithograph appears.

12. The expression "registered newspaper" means a newspaper registered by the Postmaster General for transmission by inland post.

B. Stamp Duties on Insurance Policies.

54 & 55 VICT. c. 39 (STAMP ACT, 1891).

54 & 55
Vict. c. 39,
s. 98. Sect. 98. For the purposes of this Act the expression "policy of insurance against accident" means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury, and includes any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication containing the notice only from accident or violence, or otherwise than from a natural cause.

Sect. 116. Sect. 116:—

(1.) Where any person issuing policies of insurance against accident shall, in the opinion of the Commissioners, so carry on the business of such insurance as to render it impracticable or inexpedient to require that the duty of one penny be charged and paid upon the policies, the Commissioners may enter into an agreement with that person for the delivery to them of quarterly

accounts of all sums received in respect of premiums on policies of insurance against accident.

- (2.) The agreement shall be in such form and shall contain such terms and conditions as the Commissioners may think proper, and the person with whom the agreement is entered into shall observe the rules in the second part of the second schedule of this Act.
- (3.) After an agreement has been entered into between the Commissioners and any person and during the period for which the agreement is in force, no policy of insurance against accident issued by that person shall be chargeable with any duty, but in lieu of and by way of composition for that duty there shall be charged on the aggregate amount of all sums received in respect of premiums on policies of insurance against accident a duty at the rate of five pounds per centum as a stamp duty.
- (4.) If the duty charged is not paid upon the delivery of the account it shall be a debt due to Her Majesty from the person by or on whose behalf the account is delivered.
- (5.) In the case of wilful neglect to deliver such an account as is hereby required or to pay the duty in conformity with this section, the person shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

58 VICT. c. 16 (FINANCE ACT, 1895).

. . . It is hereby for the removal of doubts declared that a 58 Vict.
policy of insurance for any payment agreed to be made during c. 16, s. 13.
the sickness of any person, or his incapacity from personal
injury within the meaning of the Stamp Act, 1891, includes a
notice or advertisement in a newspaper or other publication
which purports to insure such payment.

STOLEN GOODS (ADVERTISEMENTS FOR).

24 & 25 VICT. c. 96 (LARCENY ACT, 1861), s. 102.

Whoever shall publicly advertise a reward for the return of Advertis-
any property whatsoever which shall have been stolen or lost, ing a
and shall in such advertisement use any words purporting reward for
the return

of stolen
property,
&c.

that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of fifty pounds for every such offence to any person who will sue for the same by action of debt to be recovered with full costs of suit.

33 & 34 VICT. C. 65 (THE LARCENY (ADVERTISEMENT) ACT,
1870), ss. 2, 3.

Definition
of "news-
paper."

Limitation
of actions
for ad-
vertise-
ments of
rewards
for return
of stolen
property.

2. In this Act the term "newspaper" means a newspaper as defined for the purposes of the Acts for the time being in force relating to the carriage of newspapers by post.

3. Every action against the printer or publisher of a newspaper to recover a forfeiture under section one hundred and two of the Larceny Act, 1861, shall be brought within six months after the forfeiture is incurred, and no such action against the printer or publisher of a newspaper shall be brought unless the assent in writing of Her Majesty's Attorney General or Solicitor General for England, if the action be brought in England, or for Ireland, if the action is brought in Ireland, has been first obtained to the bringing of such action.

INDEX.

ACCIDENT INSURANCE COUPONS, 27

“ACCORD AND SATISFACTION,” 214. *See* LIBEL.

ADVERTISEMENTS, 16-40

may be libellous, 16

defamatory meaning in, 18-20

contempt of Court in, 20

lottery advertisements, 21-23

betting advertisements, 23

prize competitions, 24-26

stolen property (“no questions asked”), 26

accident insurance coupons, 27-30

indecent advertisements, 30

right to reject advertisements, 30-32

responsibility for illegal matter, 32-34

indemnity for illegal advertisements, 34

breach of contract, 35

copyright in, 37

artistic advertisements, 38

advertisement orders to be stamped, 38

illegal practices at elections, 40

ADVERTISEMENT CANVASSERS’ BOOKS, etc., 69

ANONYMOUS CONTRIBUTIONS, alterations in, 59. *See* EDITOR.

APOLOGY “AT EARLIEST OPPORTUNITY,” 216. *See* LIBEL.

ART UNION LOTTERIES, 22

ASSIGNMENT OF TITLE, 45

AUTHOR,

agreement with, 94

responsibility for libel, 149

in French law, 310

name need not be disclosed, 150, 211, 213

payment of, 96. *See* COPYRIGHT.

AUTHOR'S COPYRIGHT IN ARTICLES,

nature and duration of, 105

reservation by agreement, 106

BANKRUPTCY OF REGISTERED OWNER, 7

BETTING ADVERTISEMENTS, 23

BLASPHEMOUS LIBEL, 241

BOARD OF GUARDIANS, fair and accurate report privileged, 168
newspaper proprietors on, 75CAMPBELL'S (LORD) ACTS, 216, 234, 239, 241, 253. *See* LIBEL.
text of. *See* APPENDIX.CERTIORARI (removal of trial), 253. *See* LIBEL.

COLONIAL PRESS LAW, 268-298

security for costs, 268

telegraphic copyright, 268

Canada, 269

Ontario, 271

Manitoba, 273

British Columbia, 273

New Brunswick, 273

Prince Edward Island, 274

Jamaica, 274

British Guiana, 274

New South Wales, 275

Victoria, 276

Queensland, 277

S. Australia, 278

W. Australia, 280

Tasmania, 282

New Zealand, 283

India, 283

Hong-Kong, 287

East Asia, 288

Ceylon, 289

Cape of Good Hope, 290

Natal, 292

South African Republic, 293

"COMMON INFORMER," 6, 22, 27

COMPOSITORS, responsibility of, 145, 233. *See* LIBEL.

COMPULSORY RECTIFICATION ("reasonable correction"), 172

in France, 307

in Germany, 314

in Hungary, 320

"CONFESSION AND AMENDS," 215. *See* LIBEL.

CONSOLIDATION OF ACTIONS, 207. *See* LIBEL.

CONTEMPT OF COURT, 244, 257
parliament, 244, 257

CONTRACTS, 51
of proprietor with staff, 52
termination of, 63
by death or bankruptcy of employer, 66

CONTRIBUTIONS,
anonymous, 59
signed, 60
limited use of, 62

CONTRIBUTOR, rights of, 58

COPIES OF NEWSPAPERS,
to be preserved for six months, 9
to be delivered to British Museum, &c., 11

COPYRIGHT,
in advertisements, 37
in unpublished matter at common law, 80
in lectures, 82-85
in unpublished news, 85-87
in published matter, statutory, 87
definition of, 87
perpetual, 88
requisites for, 88-93
work must be literary, 88
original, 89
in extracts, 89
in summary, 89
in reports, 90
work must be such that publication not illegal, 91
publication, 93
newspaper a "book" under Act of 1842, 93

LAW OF NEWSPAPER COPYRIGHT AS AFFECTING PROPRIETOR AND WRITER,
position of newspaper proprietor, 94-103
agreement with writer, 94
payment of writer, 96
registration, a condition precedent to suing, 98
nature of proprietor's copyright, 103
separate publication, 104
position of writer, 105, 106

PIRACY,
definition of, 106
by literal reproduction, 107
substantial reproduction, 110
acknowledgment no defence, 113

COPYRIGHT—*continued.*

PIRACY,

- the "custom" to quote, 114
- international copyright in news, 115
- copyright in illustrations, 116
- in photographs, 117
- remedies, 119
- author's remedy, 119
- limitations of actions, 121

CORPORATION. *See* LIBEL.

- libel on, 131-133
- libel must be on character of, 131
- may be sued for libel, 134

COSTS IN A LIBEL ACTION, 208, 227, 249

COUNTY COUNCILS, newspaper proprietors on, 75

COUNTY COURT (remittal of action), 205-207. *See* LIBEL.CRIME, incitements to, 244
in French law, 309CRIMINAL LIBEL, 232-256. *See* LIBEL.

CRITICISM,

- fair criticism no libel, 181
- of public officers, 182
- of private enterprises, 183
- of books and plays, 184. *See* LIBEL.

DAMAGES, excessive, 223

- aggravation of, 224. *See* LIBEL.

DEAD, libel on the, 238, 248
(French law), 311DISTRICT AND PARISH COUNCILS, newspaper proprietors on,
75.

EDITOR,

- letters to, 56
- contracts with proprietor, 52, 55, 65
- position of, 52-54
- scope of authority, 53
- duties of, 54-56
- editor and contributors, 56
- no property in MSS. or letters, 56
- right to alter MSS., 58-60
- measure of damages for breach of agreement, 64
- "notice" and dismissal, 65
- bound to publish reply (France), 307
(Germany), 314

EDITOR—*continued*.

- responsibility for libel, 148. *See* LIBEL.
- not bound to disclose writer's name, 150
- no legal definition of editor, 53, 148
- first mentioned in Libel and Registration Act, 240
- must insert "reasonable correction," 172
- statements to, not privileged, 180
- in France, position and duties of, 307, 312
- in Germany, position and duties of, 314-316

EX PARTE APPLICATIONS PRIVILEGED, 165, 166. *See* PRIVILEGE.

EXTRACTS, copyright in, 89. *See* COPYRIGHT.

"FAIR AND ACCURATE" REPORT, when privileged, 174-180

FEES,

- for registration (Registration Act), 8
- "representative proprietor," 9
- for registration (Post Office Act), 13
- Copyright, 332

FOX'S LIBEL ACT, 236

text. *See* APPENDIX.

FRAUD OR MISREPRESENTATION DESTROYS COPYRIGHT,
92

HEADINGS NOT PRIVILEGED, 180

HUSBAND AND WIFE, evidence of, in trial for libel, 254

ILLEGAL PRACTICES AT ELECTIONS, 70

ILLUSTRATIONS, copyright in, 116

IMPRINT, 10

IMPUTATIONS ON PRIVATE CHARACTER, 127, 189

in French law, 304, 309

INDEMNITY AGAINST PENALTIES INVALID, 34

INDICTMENT, proceedings by, 247

INFORMATION, proceedings by, 247-249

INJUNCTION TO PREVENT LIBEL, 228-231

"INNUENDÓ," 140, 196

INQUIRY BEFORE MAGISTRATE, 240, 250-253. *See* LIBEL.

INTERNATIONAL COPYRIGHT, 115

INTERROGATORIES, 210-214. *See* LIBEL.

INTERRUPTIONS MAY BE LIBELLOUS, 173

"INTERVIEWING" AS A METHOD OF LIBEL, 150

IRELAND EXEMPT FROM CERTAIN STATUTES, 10, 11

JOINT OWNERSHIP OF NEWSPAPER, 47-51

JUDGE AND JURY, relative functions of, 141. *See* LIBEL.

JUDGE'S CHARGE, report of, privileged, 175

JUDICIAL PROCEEDINGS, 164-166. *See* PRIVILEGE.

JUSTIFICATION,

"true in substance and in fact," 181

fair and honest comment on matters of public interest, 181

public interest, 181

private enterprises, 183

fair comment, 184

mixed comments and allegations of fact, 185-190

burden of proof, 190

allegations of fact, 190

separable libels, 192

proof required, 193

innuendo, 196

in criminal cases, 239

"truth" and "public benefit," 239

LECTURES, right to publish, 82-85

LETTERS TO EDITOR, 56

"reasonable contradiction," 172

LIABILITIES OF PROPRIETORS, 70-78

illegal practices at elections, 70

relief, 72

as members of public bodies, 74

under Official Secrets Act, 76

LIBEL,

LIBEL AS A CIVIL INJURY, 124-231

defamatory libel, defined, 124

necessary conditions, 124

certainty of application, 124

defamation, a question of common sense, 127

trade libels, 129

libels on corporations, 131

libels on firms and unincorporated companies, 133

malice, 133

actual malice not necessary, 133. *See* MALICE.

meaning of writer, 134

LIBEL—*continued.*

LIBEL AS A CIVIL INJURY,

- construction, 135
- ordinary meaning, 136
- words *primâ facie* innocent, 137
- innuendo, 140
- function of judge and jury, 141

PUBLICATION BY DEFENDANT, 142-156

- responsibility for publication, 144
- proprietor, 145
- printer, 145
- publisher, 147
- editor, 148
- vendor, 148
- author, 149
- what constitutes publication, 152
- limited publication, 153
- publication in foreign newspaper, 154
- previous publication, 155
- death, effect of, 156

PRIVILEGE, 157-180

- absolute privilege, 157
- partial privilege, 159
- express malice, 159
- proof of malice, 160
- privileged publication, 162
- parliamentary reports, 162
- judicial proceedings, 164
- "publicly heard," 165
- ex parte* applications, 165
- other public proceedings, 167
- official notices, 169
- public bodies, 169
 - meetings, 170
- conditions of privilege, 171
- report published maliciously, 171
- reasonable contradiction, 172
- public concern and public benefit, 172
- fair and accurate, 174-180
- headings of reports, 180

JUSTIFICATION, 181-197

- public interest, 181-184
- fair comment, 184
- mixed comment and allegations of fact, 185
- corrupt motives, 186
- trivial inaccuracy, 187
- private character, 189
- allegations of fact, 190
- plea of truth, 190
- separable libels, 192
- proof required, 193

LIBEL—*continued.*

JUSTIFICATION,

- general charge, 194
- innuendo, 196

SLANDER OF PROPERTY, 198-204

- what it is, 198
- statement must be false, 200
- damage to plaintiff's property or trade, 200
- malice, 201
- actual damage, 202
- injunction, 203
- proof of damage, 204

CIVIL PROCEDURE,

- action must be brought in High Court, 205
- remittal to County Court, 205-207
- consolidation of actions, 207
- apportionment of costs, 208
- particulars of charges, 209
- interrogatories, 210-214
- defences, 214
- release by plaintiff, 214
- accord and satisfaction, 214
- confession and amends, 215
- Lord Campbell's Act, 216
- apology "at earliest opportunity," 216
- payment into Court, 216
- res judicata*, 219-222
- Statutes of Limitation, 160-222
- death of party, 222
- damages, excessive, 223
 - aggravation, 224
 - mitigation, 225
- libel by quotation, 225
- previous action for same libel, 226
- new trial, 226
- costs, 227
- injunction to restrain, 228-231

LIBEL AS A CRIMINAL OFFENCE, 232-256

- "breach of the peace," 233
- classes of criminal libel, 233
- responsibility (Lord Campbell's Act), 233-236
- Fox's Act, 236
- no joint responsibility, 237
- defamatory libels, 237
- publication (limited), 237
- libel on the dead, 238
- privilege and justification, 239
- "the greater the truth the greater the libel," 239
- summary jurisdiction, 240
- "disorderly libels," 240
- blasphemous libel, 241
- obscene libel, 242

LIBEL—*continued.*

LIBEL AS A CRIMINAL OFFENCE,

- sedition libel, 244
- contempt of Parliament, 244
- of Court, 244
- threats to publish, 246

CRIMINAL PROCEDURE,

- criminal information, 247
 - by Attorney-General, 247
 - by private "relator," 247-249
- indictment, 249
- inquiry before magistrate, 250
- summary dismissal of case, 252
- "bound over" (Vexatious Indictments Act), 252
- summary conviction, 252
- returned for trial, 253
- removal to Queen's Bench Division (certiorari), 253
- plea of not guilty, 253
- plea of justification, 253
- evidence of prisoner and husband or wife, 254
- punishment, defamatory libel, 254
 - blasphemous libel, 255
 - obscene libel, 255
- summary conviction for, 255
- appeal to quarter sessions, 255

LIBEL, no copyright in, 91

LIMITATION, STATUTES OF, 222. *See* LIBEL.

- in French law, 313
- in German law, 316

LOCAL BOARD OR AUTHORITY, fair and accurate account of, 168

LOTTERIES, 21-23. *See* ADVERTISEMENTS.

"MALICE,"

- (legal) meaning of, 133. *See* LIBEL.
- (express) destroys privilege, 159, 160
- proof of, 160-162
- in slander of title, 201, 202
- (*l'intention de nuire*) in French law, 310
- (*dolus*) in German law, 315

MANUSCRIPTS,

- property in, 56
- responsibility for loss, 57
- editor's right to alter, 58-61. *See* EDITOR.

MEETINGS, 167-171. *See* PUBLIC MEETINGS.

MIXED COMMENT AND STATEMENT OF FACTS, 185

MORTGAGE OF NEWSPAPER, 46

MULTIPLICATION OF LIBEL, 208, 212, 225

MUNICIPAL CORPORATIONS, newspaper proprietors on, 75

NEWS, copyright in, 85. *See* COPYRIGHT.

NEWSPAPER,

definition of: Libel and Registration Act, 2, 165, 226

Post Office Act, 12, 27

Lord Campbell's Act, 216

French law, 306

German law, 314

newspaper a "book" for copyright purposes, 93. *See* COPYRIGHT.

registration of, 3-9

for postage, 12, 13

for copyright, 98

in France, 4, 306

no copyright in title, 41

mortgage of, 46

joint ownership of, 47-51

partnership disputes, 48, 49

use of premises and type, 49

OBSCENE LIBEL, 242, 255

OFFICIAL NOTICES PRIVILEGED, 169

OFFICIAL SECRETS ACT, 76

PARLIAMENT, CONTEMPT OF, 244

PARLIAMENTARY REPORTS PRIVILEGED, 162. *See* PRIVILEGE.

PARTICULARS, 209, 225. *See* LIBEL.

PAYMENT INTO COURT (Lord Campbell's Act), 216. *See* LIBEL.

PENALTIES,

non-registration (£25), 5

misleading registration (£100), 5

summary recovery of, 6, 7, 9

non-preservation of copies (£20), 10

omission of "imprint" (£5 for each copy), 10

non-delivery of copies at British Museum, &c. (£5), 11

lottery advertisement (£50), 21

betting advertisement (£30 or imprisonment), 24

stolen property advertisement ("no questions asked") (£50), 27

unauthorized "accident coupon" (£20), 28

illegal practice at elections (£100), 71-73

under Elementary Education Act, 74

Official Secrets Act, 76

PHOTOGRAPHS, copyright in, 117

PIRACY. *See* COPYRIGHT.

POSITION OF EDITOR, 52-54

POST OFFICE REGULATIONS, 12-15

PRINTER,
 must register newspaper, 3-5
 preserve copies, 9
 responsibility for libel. *See* LIBEL.

PRIVILEGE. *See* LIBEL.
 absolute privilege, 157
 partial privilege, 159
 nature of, 159
 privileged publication, 162
 reports of proceedings in Parliament, 162
 judicial proceedings, 164
 ex parte applications, 165
 other public proceedings, 167
 official notices, 169
 meetings of public bodies, 169
 public meetings, 170
 conditions of privilege,
 absence of malice, 171
 must insert "reasonable correction," 172
 report must be of "public concern" and for "public benefit,"
 173
 must be "fair and accurate," 174
 headings of reports not privileged, 180
 in criminal cases, 239. *See* CRITICISM.
 "faithful and *bonâ fide*" reports privileged in France, 312

PRIZE COMPETITIONS, when illegal, 24-26

PROPERTY IN TITLE OF NEWSPAPER, 41

PROPRIETOR,
 proprietor "may" register (Registration Act), 4
 change of, 4, 7
 definition of, 8
 "representative proprietors," 8
 "proprietor or printer" must register (Post Office Act), 12
 proprietor's copyright in articles, 94-103. *See* COPYRIGHT.
 joint ownership, 47-51. *See* NEWSPAPER.
 contracts with third parties, 51
 contracts with staff, 52, 55, 65
 "notice" and dismissal, 65
 measure of damages for breach of contract, 64. *See* EDITOR.
 liabilities of, 70-78. *See* LIABILITIES.
 responsibility for libel, 145. *See* LIBEL.

PUBLICATION. *See* LECTURES ; SERMONS.

publication essential for statutory copyright, 87. *See* COPYRIGHT.

responsibility for publication of a libel, 144, 237. *See* LIBEL.

publication of blasphemous or indecent matter absolutely forbidden, 164, 168

publication of reports may be forbidden (French law), 311

"PUBLICATIONS" which are not newspapers, 2

"PUBLIC CONCERN" and "PUBLIC BENEFIT," 172, 173, 181-184. *See* CRITICISM.

PUBLIC MEETINGS, etc., reports of, 170

must be "fair and accurate," 174

"*bonâ fide* held for a lawful purpose," 170. *See* PRIVILEGE.

PUBLISHED MATTER, statutory copyright in, 87

PUBLISHER, responsibility for libel, 147. *See* LIBEL.

QUARTER SESSIONS, appeal to, 255

QUOTATION, piracy by, 114. *See* COPYRIGHT.

libel by, 225. *See* LIBEL.

"REASONABLE CONTRADICTION OR EXPLANATION," 172

REGISTRATION. *See* NEWSPAPER.

under Newspaper Libel and Registration Act, 1881, 1

time and place of registration, 3

who may register, 4, 5

non-registration, penalty for, 5

misleading registration, penalty for, 5

false return endangers property, 6

neglect to register, 7

bankruptcy of registered owner, 7

fees for registration, 9

certified copy of register, 9

under Post Office Act, 1870, 12

for foreign postage, 14

Copyright Act, 1842, 98

RELEASE BY PLAINTIFF, 214. *See* LIBEL.

REPORTERS AT PUBLIC MEETINGS, 78

REPORTS, copyright in, 90. *See* COPYRIGHT.

REPORTS AND PROCEEDINGS OF PARLIAMENT, 162

REPORTS, PRIVILEGED (civil law), 162-180

(criminal law), 239

See also OFFICIAL NOTICES, PRIVILEGE, PUBLIC BODIES.

RES JUDICATA, 219-222. See LIBEL.

RESPONSIBILITY OF REGISTERED PROPRIETOR, 7
for "civil" libel, 145
for criminal libel, 233-236. See LIBEL.

SCHOOL BOARD, "fair and accurate" report, 168
newspaper proprietors on, 74

SEDITIONOUS LIBEL, 244

SEIZURE OF PAPERS, 243, 255
in Germany, 318
in Austria, 319

SIGNED CONTRIBUTIONS, 60
in France, 305

SLANDER OF PROPERTY, 198
falsehood and "special damage," 200
malice, 201
corporation may sue for, 132

STATUTES REFERRED TO,
21 Jac. 1, c. 16 (*Limitation*), 222
4 & 5 Wm. & Mary, c. 18 (*Criminal Information*), 247
10 & 11 Wm. 3, c. 17 (*Advertisements*), 21
4 & 5 Anne, c. 3 (*Limitation*), 222
8 Anne, c. 16 (*Copyright*), 87
23 & 24 Geo. 3, c. 28 (*Registration, Ireland*), 11
32 Geo. 3, c. 60 (*Fox's Act*), 236
36 Geo. 3, c. 7 (*Treason*), 244
38 Geo. 3, c. 78 (*Registration*), 1
39 Geo. 3, c. 79 (*Preserving Copies*), 10
42 Geo. 3, c. 119 (*Lotteries*), 21
57 Geo. 3, c. 6 (*Treason*), 244
60 Geo. 3, c. 8 (*Seditious Libel*), 244
4 Geo. 4, c. 60 (*Lotteries*), 21
5 Geo. 4, c. 83 (*Obscene Libel*), 255
3 & 4 Wm. 4, c. 15 (*Dramatic Copyright*), 120
5 & 6 Will. 4, c. 65 (*Lectures*), 82
6 & 7 Will. 4, c. 66 (*Lotteries*), 21
———— c. 76 (*Disclosure*), 11, 213
7 Will. 4, & 1 Vict. c. 36 (*Post Office Act*), 15
2 & 3 Vict. c. 12 (*Imprint*), 10
3 & 4 Vict. c. 9 (*Privilege of Parliament*), 158, 163
5 & 6 Vict. c. 38, 255, 256
———— c. 45 (*Copyright*), 11, 37, 87, 88, 93, 94, 96, 99, 104-
106, 116
6 & 7 Vict. c. 96 (*Lord Campbell's Act*), 216-218, 234, 239, 241,
246, 249, 254, text, see Appendix.
8 & 9 Vict. c. 74 (*Intervention of Law Officers*), 22

STATUTES REFERRED TO—*continued.*

- 8 & 9 Vict. c. 75 (*Lord Campbell's Act, Amendment*), 216
 9 & 10 Vict. c. 33 (*Intervention of Attorney-General*), 10
 ————— c. 48 (*Art Union Lotteries*), 22
 11 & 12 Vict. c. 12 (*Treason Felony*), 244
 14 & 15 Vict. c. 100 (*Obscene Libel*), 255
 16 & 17 Vict. c. 119 (*Betting Advertisements*), 23
 19 & 20 Vict. c. 97 (*Limitation*), 222
 20 & 21 Vict. c. 83 (*Obscene Libels*), 255
 24 & 25 Vict. c. 96 (*Larceny, Threats*), 26, 246, 255
 25 & 26 Vict. c. 68 (*Fine Arts Copyright*), 38, 116, 117
 ————— c. 89 (*Companies*), 48
 30 & 31 Vict. c. 35 (*Vexatious Indictments*), 252
 31 & 32 Vict. c. 110 (*Telegraph Act*), 15
 32 & 33 Vict. c. 24 (*Repeal Consolidation*), 1, 9, 10, 213
 33 & 34 Vict. c. 65 (*Stolen Goods*), 27
 ————— c. 75 (*Elementary Education*), 74
 ————— c. 79 (*Post Office Act*), 12–15, text, see Appendix.
 ————— c. 97 (*Stamp Act*), 28
 37 Vict. c. 15 (*Betting Advertisements*), 23
 38 & 39 Vict. c. 22 (*Post Office Act*), 15
 41 & 42 Vict. c. 31 (*Bills of Sale*), 47
 44 & 45 Vict. c. 19 (*Post Office Act*), 15
 ————— c. 60 (*Newspaper Libel and Registration Act*), 1–9,
 101, 165, 168, 240, 251, 252, text, see Appendix.
 45 & 46 Vict. c. 50 (*Municipal Corporations*), 75
 46 & 47 Vict. c. 51 (*Corrupt and Illegal Practices Act*), 70
 ————— c. 52 (*Bankruptcy Act*), 46
 47 & 48 Vict. c. 70 (*Municipal Elections Act*), 40, 71
 49 & 50 Vict. c. 33 (*Copyright*), 93
 51 & 52 Vict. c. 41 (*Local Government Act*), 71, 75
 ————— c. 43 (*County Courts Act*), 205
 ————— c. 62 (*Preferential Payments*), 67
 ————— c. 64 (*Law of Libel Amendment Act*), 2, 17, 158,
 164, 167, 170–172, 207, 220, 249, 254
 52 & 53 Vict. c. 18 (*Indecent Placards*), 30
 ————— c. 42 (*Accident Insurance*), 28
 ————— c. 52 (*Official Secrets*), 76
 53 & 54 Vict. c. 18 (*Indecent Advertisements*), 30
 54 & 55 Vict. c. 39 (*Stamp Act*), 28, 39, 52
 56 & 57 Vict. c. 61 (*Public Authorities Protection Act*), 121–123
 ————— c. 73 (*Parish Councils*), 71, 75
 58 Vict. c. 16 (*Finance Act*), 30
 58 & 59 Vict. c. 40 (*Corrupt Practices*), 73
 60 & 61 Vict. c. 16 (*Preferential Payments*), 67

STATUTORY COPYRIGHT, 87. See COPYRIGHT.

STOLEN PROPERTY, 26. See ADVERTISEMENTS.

SUB-EDITOR, responsibility for libel, 145, 233

SUMMARY, copyright in, 89. See COPYRIGHT.

SUMMARY JURISDICTION, 240, 250–252. See LIBEL.

"SUPERIOR COURTS OF RECORD," 257. *See* CONTEMPT.

"SUPPLEMENT," definition of, 13

TITLE OF NEWSPAPER, property in, 41-43

no copyright in, 41

Court will protect, 41

infringement of, 43

nature of property in, 44-46

assignment of, 45

TOWN COUNCIL, "fair and accurate" report, 168

TRUTH AS A DEFENCE (civil libel), 181, 190-196. *See*
JUSTIFICATION.

in French law, 311

TRUTH AND PUBLIC BENEFIT (criminal libel), 239

UNIVERSITY LECTURES, publication of, 82-85. *See* COPYRIGHT.

UNPUBLISHED MATTER, rights of author in, 80, 81

VENDOR, responsibility for libel. *See* LIBEL.

VESTRIES, LONDON, newspaper proprietors on, 75

VESTRY MEETING, "fair and accurate" report, 168

VEXATIOUS INDICTMENTS ACT, 252

VEXATIOUS PROSECUTIONS, protection against, 10, 22, 27

WRITER, 96, 149. *See* AUTHOR.

WRONGFUL DISMISSAL, 64

LONDON :

PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,
STAMFORD STREET AND CHARING CROSS.

Crown 8vo, cloth, 5s.

WRITS OF SUMMONS. The Law and Practice relating to Writs of Summons, their issue and service, containing Chapters on the Special Indorsement and Service out of the Jurisdiction. By WALTER GORST CLAY, of the Inner Temple, Barrister-at-Law.

Royal 12mo, cloth, 12s. 6d.

THE LONDON BUILDING ACT, 1894. With Notes and Cross References and an Appendix containing such existing Statutes as still affect building operations within the Administrative County of London; also the Bye-Laws, Regulations and Orders of the London County Council and of the Commissioners of Sewers of the City of London. By W. RUSSELL-GRIFFITHS, LL.B. of the Inner Temple and Midland Circuit, Editor of "The Statutes Regulating London Building;" and FRANCIS W. PEMBER, M.A., of Lincoln's Inn, Fellow of All Souls' College, and late Eldon Law Scholar, Draftsman of the Bill as originally introduced into the House of Commons.

Second Edition, demy 8vo, 800 pages, cloth, 30s.

THE MERCHANT SHIPPING ACT, 1894. With Copious Notes and References to decided Cases, and an exhaustive Index. By T. E. SCRUTTON, Esq., of the Middle Temple, Barrister-at-Law, Author of "Charter Parties and Bills of Lading," &c.

The aim of the author has been to render the Act, which is the longest ever passed by Parliament, accessible and intelligible both to lawyers and commercial men; and by a copious index containing over 1600 entries, and by constant cross references to other parts of the Act, to make it as easy to find what is wanted as is possible in an Act of 748 clauses and 22 schedules.

* * This Act consolidates all the previous enactments of Merchant Shipping.

Third Edition, revised, demy 8vo, cloth, 10s. 6d.

THE SALE OF GOODS ACT, 1893, including the Factors' Acts, 1889 and 1890. With an Introduction and Appendices, containing Statutes and Notes, &c. By His Honour Judge CHALMERS (Draftsman of the Act).

"Probably there are few men who are better qualified to write a text-book on the above subjects than the draftsman of the Bills of Exchange Act, 1882, and the Sale of Goods Bill, 1889."—*Law Times*.

Second Edition, demy 8vo, cloth, 25s.

DARBY AND BOSANQUET ON THE STATUTES OF LIMITATIONS. Second Edition. By F. A. BOSANQUET, Q.C., and J. R. V. MARCHANT, Barrister-at-Law.

Demy 8vo, cloth, 20s.

THE LAW OF HUSBAND AND WIFE. By CHARLES CRAWLEY, M.A., of Lincoln's Inn, Barrister-at-Law, late Fellow of Downing College, Cambridge, and Author of "The Law of Life Insurance."

"This book is the most comprehensive and valuable one on the law of husband and wife with which we are acquainted."—*Athenæum*.

Third Edition, thoroughly revised, demy 8vo, cloth, 15s.

THE LAW OF COPYRIGHT. Including the American Copyright Act, the Berne Convention, the Consequent Order in Council and Cases to Date. By THOMAS EDWARD SCRUTTON, M.A., LL.B., Barrister-at-Law, Author of "Charter Parties and Bills of Lading," &c., and Lecturer in Common Law to the Incorporated Law Society.

"Mr. Scrutton's book is well written and has been carefully revised, and will be found a safe and acceptable guide through the mazes of the existing law."—*Law Journal*.

"We think it is not only the easiest, but the most useful and practical work on copyright."—*Law Quarterly Review*.

Second Edition, revised, royal 8vo, cloth, 35s.

THE LAW OF TRADING COMPANIES. Including the recent Acts. Arranged in a Series of Titles in Alphabetical Order. By EDWARD MANSON, of the Chancery Bar. An invaluable digest of easy reference, not only to the legal profession, but also to directors, secretaries, and managers of public companies.

"We do not agree with the initial words of Mr. Manson's preface that 'some apology is needed for a new book on company law.' Books are much needed on every branch of law which treat law as this does. . . . A genuine effort in a very desirable direction has been made. It deserves cordial recognition."—*Law Times*.

Seventh Edition, royal 8vo, cloth, 38s.

ROBSON'S LAW OF BANKRUPTCY. Containing a Full Exposition of the Principles and Practice of the Law. By GEORGE YOUNG ROBSON, Esq., Barrister-at-Law.

"We know of no better treatise on this branch of our law, and, looking to the number of editions through which it has passed, our opinion is apparently shared by the profession."—*Law Times*.

Royal 8vo, 700 pages, cloth, £2 2s.

INFORMATIONS (Criminal and Quo Warranto), MANDAMUS, and PROHIBITION. By His Honour Judge SHORTT, Author of "The Law Relating to Works of Literature and Art (Copyright, Libel, &c.)."

"A very useful contribution to the lawyer's library."—*Law Journal*.

"Learned and accurate, and must displace all earlier text-writers on the same subject."—*Law Times*.

WM. CLOW

ed, LAW PUBLISHERS,

T

PETITION

Petitions of Right
Proceedings by Petition
WALTER CLODE,

MOORE'S

and Select Precedents
With numerous
Preparing Abstracts
HERBERT PERCIVAL

MOORE'S

relating to Sales and
and Arbitrations,
other subjects :
revised. By HERBERT PERCIVAL

MOORE'S

TIONS TO VOUCHERS
Practice, especially

MOORE'S

Abstracts of Titles
of "Practical Feudal"
REGINALD MERITT

WITNESSES

Civil and Criminal
Courts. By WALTER CLODE
Barrister-at-Law.

NEW

ADMIRALTY

by the High Court
Sir GEORGE HARRISON
Together with Extracts
of the Judges' Decisions
1701-1781. Edited by

CHARTER

in Charter Parties
Barrister-at-Law,

"An entirely new volume
As a practical and accurate

"Mr. Scrutton has shown
the book will be found

SALVAGE,

By HARRY NEWELL
of the Law of Shipping

"A useful summary
to those practically in

THE LAW

TAKING OR IMPOSING
Acts, 1845, 1860,
Dwellings Improvements
1870; General Measure
With an Introduction
MIDDLETON, of Lincoln's Inn

"The book is a most
for the compensation law

2s. 6d.

and Practice of), under the
Appendix containing the Laws Regulating
and certain Colonies and Dependencies. By
WALTER CLODE.

8vo, cloth, 20s.

Containing a variety of Useful
relating to Conveyancing and General Matters.
MOORE, Esq., Author of "Instructions for
Agreements," &c. Edited and revised by
WALTER CLODE.

cloth, 20s.

S OF AGREEMENTS,

and Enfranchisements and Exchanges, Building
Leases, Debtors and Creditors, and numerous
by H. MOORE. Fourth Edition, thoroughly
revised, Barrister-at-Law.

cloth, 7s. 6d.

CTIONS AND SUGGES-

AND other CLERKS in Matters of Daily

cloth, 10s. 6d.

ES. Instructions for Preparing
Precedents. By HENRY MOORE, Esq., Author
of "Practical Feudal." With considerable Additions. By
B.A., of Lincoln's Inn, Barristers-at-Law.

s. 6d.

), in all matters and proceedings
relating, both in the Superior and the Inferior
Courts (of Balliol College), of Lincoln's Inn,

8vo, calf, £1 11s. 6d. net.

Reports of Cases determined
in the High Court of Admiralty and the Courts
of the High Court of Admiralty and the Courts
of the Admiralty Matters, Inner Temple, Barrister-at-Law.

h, 18s.

t of Affreightment as expressed
in the Middle Temple, &c.

"I am glad to find it has now been supplied. . . .
I have upon it."—*Law Times*.

which has long been felt. . . . Altogether

15s.

NOTAGE (THE LAW OF).

WALTER CLODE, Barrister-at-Law, Author of "A Digest

of the Law of Notage, and
I strongly recommend to the legal profession and
to the public.

cloth, 32s.

COMPENSATION FOR

LOSS OF LANDS. Under the Lands' Clauses Consolidation
Act, 1845; Artisans' and Labourers' Dwellings
Improvement Act, 1875; Elementary Education Act,
1876; Public Acts (English, Irish, and Scotch).
By SIDNEY WOOLF, Q.C., and JAMES W.

fairly claim to be an indispensable guide-book

LONDON, E.C.

Crown 8vo, cloth, 5s.

WRITS OF SUMMONS. The Law and Practice relating to Writs of Summons, their issue and service, containing Chapters on the Special Indorsement and Service out of the Jurisdiction. By WALTER GORST CLAY, of the Inner Temple, Barrister-at-Law.

Royal 12mo, cloth, 12s. 6d.

THE LONDON BUILDING ACT, 1894. With Notes and Cross References and an Appendix containing such existing Statutes as still affect building operations within the Administrative County of London; also the Bye-Laws, Regulations and Orders of the London County Council and of the Commissioners of Sewers of the City of London. By W. RUSSELL GRIFFITHS, LL.B. of the Inner Temple and Midland Circuit, Editor of "The Statutes Regulating London Building;" and FRANCIS W. PEMBER, M.A., of Lincoln's Inn, Fellow of All Souls' College, and late Eldon Law Scholar, Draftsman of the Bill as originally introduced into the House of Commons.

Second Edition, demy 8vo, 800 pages, cloth, 30s.

THE MERCHANT SHIPPING ACT, 1894. With Copious Notes and References to decided Cases, and an exhaustive Index. By T. E. SCRUTTON, Esq., of the Middle Temple, Barrister-at-Law, Author of "Charter Parties and Bills of Lading," &c.

The aim of the author has been to render the Act, which is the longest ever passed by Parliament, accessible and intelligible both to lawyers and commercial men; and by a copious index containing over 1600 entries, and by constant cross references to other parts of the Act, to make it as easy to find what is wanted as is possible in an Act of 748 clauses and 22 schedules.

* * This Act consolidates all the previous enactments of Merchant Shipping.

Third Edition, revised, demy 8vo, cloth, 10s. 6d.

THE SALE OF GOODS ACT, 1893, including the Factors' Acts, 1889 and 1890. With an Introduction and Appendices, containing Statutes and Notes, &c. By His Honour Judge CHALMERS (Draftsman of the Act).

"Probably there are few men who are better qualified to write a text-book on the above subjects than the draftsman of the Bills of Exchange Act, 1882, and the Sale of Goods Bill, 1889."—*Law Times*.

Second Edition, demy 8vo, cloth, 25s.

DARBY AND BOSANQUET ON THE STATUTES OF LIMITATIONS. Second Edition. By F. A. BOSANQUET, Q.C., and J. R. V. MARCHANT, Barrister-at-Law.

Demy 8vo, cloth, 20s.

THE LAW OF HUSBAND AND WIFE. By CHARLES CRAWLEY, M.A., of Lincoln's Inn, Barrister-at-Law, late Fellow of Downing College, Cambridge, and Author of "The Law of Life Insurance."

"This book is the most comprehensive and valuable one on the law of husband and wife with which we are acquainted."—*Athenæum*.

Third Edition, thoroughly revised, demy 8vo, cloth, 15s.

THE LAW OF COPYRIGHT. Including the American Copyright Act, the Berne Convention, the Consequent Order in Council and Cases to Date. By THOMAS EDWARD SCRUTTON, M.A., LL.B., Barrister-at-Law, Author of "Charter Parties and Bills of Lading," &c., and Lecturer in Common Law to the Incorporated Law Society.

"Mr. Scrutton's book is well written and has been carefully revised, and will be found a safe and acceptable guide through the mazes of the existing law."—*Law Journal*.

"We think it is not only the easiest, but the most useful and practical work on copyright."—*Law Quarterly Review*.

Second Edition, revised, royal 8vo, cloth, 35s.

THE LAW OF TRADING COMPANIES. Including the recent Acts. Arranged in a Series of Titles in Alphabetical Order. By EDWARD MANSON, of the Chancery Bar. An invaluable digest of easy reference, not only to the legal profession, but also to directors, secretaries, and managers of public companies.

"We do not agree with the initial words of Mr. Manson's preface that 'some apology is needed for a new book on company law.' Books are much needed on every branch of law which treat law as this does. . . . A genuine effort in a very desirable direction has been made. It deserves cordial recognition."—*Law Times*.

Seventh Edition, royal 8vo, cloth, 38s.

ROBSON'S LAW OF BANKRUPTCY. Containing a Full Exposition of the Principles and Practice of the Law. By GEORGE YOUNG ROBSON, Esq., Barrister-at-Law.

"We know of no better treatise on this branch of our law, and, looking to the number of editions through which it has passed, our opinion is apparently shared by the profession."—*Law Times*.

Royal 8vo, 700 pages, cloth, £2 2s.

INFORMATIONS (Criminal and Quo Warranto), MANDAMUS, and PROHIBITION. By His Honour Judge SHORTT, Author of "The Law Relating to Works of Literature and Art (Copyright, Libel, &c.)."

"A very useful contribution to the lawyer's library."—*Law Journal*.

"Learned and accurate, and must displace all earlier text-writers on the same subject."—*Law Times*.

Demy 8vo, cloth, 10s. 6d.

PETITION OF RIGHT (The Law and Practice of), under the Petitions of Right Act, 1860. With Forms and an Appendix containing the Laws Regulating Proceedings by Petition of Right in Ireland, Scotland, and certain Colonies and Dependencies. By WALTER CLODE, of the Inner Temple, Barrister-at-Law.

Third Edition, revised, demy 8vo, cloth, 20s.

MOORE'S PRACTICAL FORMS. Containing a variety of Useful and Select Precedents required in Solicitors' Offices relating to Conveyancing and General Matters. With numerous Variations and Suggestions. By H. MOORE, Esq., Author of "Instructions for Preparing Abstracts of Title," "Practical Forms of Agreements," &c. Edited and revised by HERBERT PERCIVAL, of the Inner Temple, Esq., Barrister-at-Law.

Fourth Edition, demy 8vo, cloth, 20s.

MOORE'S PRACTICAL FORMS OF AGREEMENTS, relating to Sales and Purchases, Mortgages and Deposits, Enfranchisements and Exchanges, Building and Arbitrations, Letting and Renting, Hiring and Service, Debtors and Creditors, and numerous other subjects: with a variety of Useful Notes. By H. MOORE. Fourth Edition, thoroughly revised. By HERBERT PERCIVAL, of the Inner Temple, Barrister-at-Law.

Second Edition, crown 8vo, cloth, 7s. 6d.

MOORE'S PRACTICAL INSTRUCTIONS AND SUGGESTIONS TO YOUNG SOLICITORS and ARTICLED and other CLERKS in Matters of Daily Practice, especially in Country Offices.

Fourth Edition, crown 8vo, cloth, 10s. 6d.

MOORE'S ABSTRACTS OF TITLES. Instructions for Preparing Abstracts of Titles, to which is added a Collection of Precedents. By HENRY MOORE, Esq., Author of "Practical Forms of Agreements," &c. Fourth Edition. With considerable Additions. By REGINALD MERIVALE, B.A., and NORMAN PEARSON, B.A., of Lincoln's Inn, Barristers-at-Law.

Crown 8vo, cloth, 7s. 6d.

WITNESSES (The Practice relating to), in all matters and proceedings Civil and Criminal, at, after, and before the Trial or Hearing, both in the Superior and the Inferior Courts. By WALTER S. SICHEL, M.A. (late Exhibitioner of Balliol College), of Lincoln's Inn, Barrister-at-Law.

NEVER BEFORE PUBLISHED. Royal 8vo, calf, £1 11s. 6d. net.

ADMIRALTY CASES, 1648-1840. Reports of Cases determined by the High Court of Admiralty and upon Appeal therefrom. Temp. Sir THOS. SALUSBURY and Sir GEORGE HAY, Judges, 1758-1774. By Sir WILLIAM BURRELL, Bart., LL.D., M.P., &c. Together with Extracts from the Books and Records of the High Court of Admiralty and the Courts of the Judges' Delegates, 1584-1839, and a collection of Cases and Opinions upon Admiralty Matters, 1701-1781. Edited by REGINALD G. MARSDEN, of the Inner Temple, Barrister-at-Law.

Third Edition, demy 8vo, cloth, 18s.

CHARTER PARTIES. The Contract of Affreightment as expressed in Charter Parties and Bills of Lading. By T. E. SCRUTTON, M.A., LL.B., of the Middle Temple, Barrister-at-Law, Author of "The Law of Copyright," &c.

"An entirely new work has long been needed, and we are glad to find it has now been supplied. . . . As a practical and accurate work it would be difficult to improve upon it."—*Law Times*.

"Mr. Scrutton has written a book which will supply a want which has long been felt. . . . Altogether the book will be found most useful."—*Saturday Review*.

Demy 8vo, cloth, 15s.

SALVAGE, TOWAGE, AND PILOTAGE (THE LAW OF).

By HARRY NEWSON, Esq., LL.B., of the Middle Temple, Barrister-at-Law, Author of "A Digest of the Law of Shipping and Marine Insurance," &c.

"A useful summary of the law . . . which we can confidently recommend to the legal profession and to those practically interested in shipping."—*Shipping Gazette*.

Demy 8vo, 930 pages, cloth, 32s.

THE LAW AND PRACTICE OF COMPENSATION FOR TAKING OR INJURIOUSLY AFFECTING LANDS, under the Lands' Clauses Consolidation Acts, 1845, 1860, and 1869; Railways Clauses Consolidation Act, 1845; Artisans' and Labourers' Dwellings Improvement Acts, 1868 to 1882; Public Health Act, 1875; Elementary Education Act, 1870; General Metropolitan Paving Act; and other Public Acts (English, Irish, and Scotch). With an Introduction, Notes, and Forms. By the late SIDNEY WOOLF, Q.C., and JAMES W. MIDDLETON, of Lincoln's Inn, Barrister-at-Law.

"The book is a most complete one in its subject, and may fairly claim to be an indispensable guide-book for the compensation lawyer."—*Law Journal*.

UNIVERSITY OF ILLINOIS-URBANA

KD2870.F58X1898

C001

LAW OF THE PRESS 2ND ED LOND



3 0112 022843400